Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

REGENCY OUTDOOR ADVERTISING, INC.,
a California corporation,
Petitioner,

vs.

CITY OF LOS ANGELES,
a municipal corporation,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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82 pg

QUESTIONS PRESENTED

The City of Los Angeles (the "City") severely restricts the placement of wall-sized signs on the sides of multi-story buildings. A five-member Cultural Affairs Commission ("Cultural Affairs"), however, has the power to exempt certain wall signs from these restrictions by classifying them as "murals." Apart from a general statement of purpose governing all outdoor signs, the City has no guidelines in place to direct Cultural Affairs members in deciding which wall signs to exempt. Erecting a wall-sized sign without a mural exemption subjects the speaker to criminal and civil sanctions. The questions presented are:

1. Whether the City's Sign Ordinance severely restricting wall-sized signs is content-based, and must be stricken in its entirety absent a demonstration that it can withstand strict scrutiny, where it confers upon Cultural Affairs the right to grant exemptions from its restrictions following a review of a sign's message, its author, the author's past work, and the sign's sponsor.

2. Whether the City's Sign Ordinance confers unbridled discretion on Cultural Affairs, and thereby violates the First Amendment, by failing to provide specific, content-neutral guidelines for granting or denying applications for mural exemptions.

PARTIES TO THE PROCEEDING AND DISCLOSURE UNDER RULE 29.6

The following entities are parties to the proceeding in the court below:

Petitioner Regency Outdoor Advertising, Inc. is a privately held California corporation which has no parent corporations. The shares of Regency Outdoor Advertising, Inc. are not publicly traded, and no publicly held corporation owns 10% or more of its shares.

Virtual Media, Inc. is a California corporation that was a co-plaintiff below. Virtual Media, Inc. is not a petitioner here. The shares of Virtual Media, Inc., which has no parent corporations, are not publicly traded, and no publicly held corporation owns 10% or more of its shares.

The only other party to this action is Respondent City of Los Angeles California, a municipal corporation.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING AND DISCLOSURE UNDER RULE 29.6 ii

LIST OF ADDENDICES v

TABLE OF AUTHORITIES vi

PETITION FOR A WRIT OF CERTIORARI 1

DECISIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 2

STATEMENT OF THE CASE 3

A. The City's Restrictions on Wall-Sized Signs 3

B. The City's Threats of Prosecution 7

C. Procedural History 8

REASONS FOR GRANTING THE PETITION 9

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISION IN METRO-MEDIA, INC. v. CITY OF SAN DIEGO 9

Page

II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS REQUIRING OBJECTIVE AND CERTAIN GUIDELINES WHERE THE GOVERNMENT IMPOSES A PRIOR RESTRAINT ON SPEECH 17

CONCLUSION 24

LIST OF ADDENDICES

Page

APPENDIX A
Memorandum, Ninth Circuit Court of Appeals, Dated February 14, 2002 ..... A 1

APPENDIX B
Judgment, Ninth Circuit Court of Appeals, Dated February 14, 2002 (Filed in District Court of California, March 13, 2002) ..... B 1

APPENDIX C
Order, Central District of California, Dated May 30, 2001 ..... C 1

APPENDIX D
Excerpts of Division 62, Building Code, Signs, Los Angeles (California) Municipal Code, July 2000 Edition ..... D 1

APPENDIX E
Application for Approval of Mural Projects, City of Los Angeles, Board of Cultural Affairs Commission ..... E 1

TABLE OF AUTHORITIES

Page

CASES

Baldwin v. Redwood City,
540 F.2d 1360 (9th Cir. 1976), *cert. denied sub nom. Leipzig v. Baldwin*,
431 U.S. 913 (1977) 12

City of Lakewood v. Plain Dealer Publishing Co.,
486 U.S. 750 (1988) 18, 22

Desert Outdoor Advertising, Inc. v. City of Moreno Valley,
103 F.3d 814 (9th Cir. 1995),
cert denied, 522 U.S. 912 (1997) 7

Elrod v. Burns,
427 U.S. 347 (1976) 14-15

Forsyth County, Georgia v. Nationalist Movement,
505 U.S. 123 (1992) 22

Metromedia, Inc. v. City of San Diego,
453 U.S. 490 (1981) 9, 11-19

Niemotko v. Maryland,
340 U.S. 268 (1951) 18

North Olmstead Chamber of Commerce v. City of North Olmstead,
86 F.Supp.2d 755 (N.D. Ohio 2000) 12

Page

R.A.V. v. City of St. Paul, Minn.,
505 U.S. 377 (1992) 14

Saia v. New York,
344 U.S. 558 (1948) 18

Shuttlesworth v. City of Birmingham, Ala.,
394 U.S. 147, 89 S.Ct. 935,
22 L.Ed.2d 162 (1969) 7, 18-19, 24

Staub v. City of Baxley,
355 U.S. 313 (1958) 18

Turner Broadcasting System, Inc. v. FCC,
512 U.S. 622 (1994) 16-17

United States v. Playboy Entertainment Group, Inc.,
529 U.S. 803 (2000) 14

STATUTES

Page

28 U.S.C. § 1292(a)(1) 2
28 U.S.C. § 1254(1) 1
28 U.S.C. § 1331 1
28 U.S.C. § 1343(a)(3) 1
28 U.S.C. § 2107(a) 2
28 U.S.C. § 2201 1
28 U.S.C. § 2202 1
42 U.S.C. § 1983 1
Fed. Rules. App. Proc., rule 4(a)(1)(A), 28 U.S.C. 2
Los Angeles Municipal Code, Ch. 62, § 91.6201 5-6
Los Angeles Municipal Code, Ch. 62, § 91.6203 3
Los Angeles Municipal Code, Ch. 62, § 91.6209 4
Los Angeles Municipal Code, Ch. 62, § 91.6210 10
Los Angeles Municipal Code, Ch. 62, § 91.6216 4
Los Angeles Municipal Code, Ch. 62, § 91.6216(a) 5
Los Angeles Municipal Code, Ch. 62, § 91.6216(b) 4
Los Angeles Municipal Code, Ch. 62, § 91.6217.2 9
Los Angeles Municipal Code, Ch. 62, § 91.6218 10
Los Angeles Municipal Code, Ch. 62, § 91.6220 4
U.S. Const., 1ST Amend. 2
U.S. Const., 14TH Amend., § 1 2

PETITION FOR A WRIT OF CERTIORARI

Petitioner Regency Outdoor Advertising, Inc. ("Petitioner") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

DECISIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit was not officially published, but is reprinted as Appendix A hereto. The order of the District Court from which Petitioner appealed to the United States Court of Appeals for the Ninth Circuit was not published, and is reprinted as Appendix C hereto.

JURISDICTION

Judgment of the United States Court of Appeals for the Ninth Circuit was entered on February 14, 2002.[1] No petition for rehearing was filed. The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

In the proceedings below, the jurisdiction of the District Court was properly invoked on the basis of the existence of a federal question and deprivation of civil rights pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). This action arose under the Constitution of the United States, the Federal Civil Rights Act, 42 U.S.C. § § 1983 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

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[1] The Judgment of the Ninth Circuit was filed by the District Court on March 13, 2002, and entered on March 14, 2002; the District Court's notice thereof is reprinted as Appendix B hereto.

Petitioner on June 29, 2001 filed a timely Notice of Appeal. 28 U.S.C. § 2107(a) and Fed.R.App.P. 4(a)(1)(A). The United States Court of Appeals for the Ninth Circuit properly exercised jurisdiction of the appeal under 28 U.S.C. § 1292(a)(1), which provides that the courts of appeals shall have jurisdiction of appeals from "interlocutory orders of the district courts of the United States . . . or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court."

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment to the Constitution of the United States provides, in pertinent part, that:

> Congress shall make no law ... abridging the freedom of speech, ...or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. I.

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, that:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

The provisions of the Los Angeles Municipal Code applicable here are reprinted as Appendix D hereto.

STATEMENT OF THE CASE

A. The City's Restrictions on Wall-Sized Signs

Petitioner Regency Outdoor Advertising, Inc. ("Petitioner"), an outdoor advertising company, is one of two plaintiffs below that sought to enjoin Respondent City of Los Angeles (the "City") from enforcing the provisions of its Municipal Code prohibiting large, wall-sized displays that are painted upon, or affixed by a cabling system to, the sides of multi-story buildings (the "Sign Ordinance").

Off-premise signs or billboards, which carry messages unrelated to the site on which they are located or the activities conducted thereon, cannot be placed within the City of Los Angeles unless the speaker first obtains a permit. Due to their prominence in the City's skyline, displays on the sides of multi-story buildings are highly desirable. The City's Sign Ordinance severely restricts – effectively prohibiting – all off-premises wall-sized signs unless an exemption applies.

Wall signs are defined in § 91.6203 of the Sign Ordinance as follows:[2]

> **Wall Sign.** Any sign attached to, painted on or erected against the wall of a building or structure, with the exposed face of the sign in a plane approximately parallel to the plane of the wall.

Section 91.6203 also provides the definition for a "mural sign." (App. at D 3.) The only physical distinction

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[2] The relevant portions of § 91.6203 are reprinted in Appendix D hereto.

between a "mural sign" and a "wall sign" is the suspect and ambiguous requirement that a mural sign contain less than three percent "written material." (App. at D 4.) Otherwise, a "mural sign" is nothing more than a wall sign that has been approved by the five-member Cultural Affairs Commission ("Cultural Affairs"):

> **Mural Sign.** A sign which is applied to and made integral with a wall, the written message of which does not exceed three percent of the total area of the signs, and which *has been approved* pursuant to Section 91.6216 of this code (emphasis added).

Section 91.6216 confers on Cultural Affairs the authority and power to exempt certain wall signs from the prohibitions and restrictions placed on off-premises signs generally and wall signs in particular by classifying the sign as a "mural." (App. at D 6.) Where Cultural Affairs confers the status of a "mural" on a wall sign, the sign is benefited by an exemption from virtually all restrictions otherwise applicable, and the speaker is free to convey the proposed message without the restraints imposed on other off-site signage and other wall signs.

Section 91.6216(b) implements this exemption by providing that "mural signs shall not be required to comply with the provisions of § 91.6209 and 91.6220 of this Division." (App. at D 6.) Virtually all of the most severe restrictions on wall signs and off-site signs are contained within these two sections of the Sign Ordinance. They restrict the size, location, manner of construction, spacing, and height of signs, and in addition limit them to certain zones of the City. These restrictions effectively eliminate large wall-sized signs. Thus, when Cultural Affairs decides

to grant mural status to a wall sign, a person previously restrained from speaking is suddenly allowed to speak.

As to procedural mechanics, a wall sign may be considered for classification by Cultural Affairs as a "mural" upon application by the speaker. The application form requires the applicant to describe the content of the message that will be displayed.[3] The application also requires that the would-be speaker identify the person designing the sign, as well as that person's prior work. The application further requires that the speaker identify who is sponsoring the sign. Cultural Affairs as a result decides whether to grant mural status to signs, and in the process to exempt them from the severe restrictions of the Sign Ordinance otherwise applicable to wall-sized messages, after assessing (i) the content of signs, (ii) the identity and past works of the artist creating them, and (iii) the identity of the person(s) paying for the speech.

No set of written guidelines governs the exemption deliberations of Cultural Affairs. The City points to the general statement of purpose contained in the Sign Ordinance (the "Statement of Purpose") as the set of guidelines governing mural exemption deliberations. L.A.M.C. § 91.6201. In actuality, murals are not required to further the Statement of Purpose, but under § 91.6216(a) need only avoid conflict with its goals. (App. D.)

A statement of purpose, of course, has significant First Amendment implications, for through it a legislative body articulates the specific interests to be furthered by its regulatory scheme burdening speech. The Statement of Purpose identified by the City here, however, is not aimed at confining the discretion of Cultural Affairs in particular,

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[3] The relevant portion of the Cultural Affairs application form referred to herein is reprinted as Appendix E hereto.

but at the regulation of outdoor signs in general. The Statement of Purpose reads as follows:

> **Purpose**. The purpose of this division is to promote public safety and welfare by regulating signs in keeping with the following objectives:
>
> 1. That the design, construction, installation, repair and maintenance of signs will not interfere with traffic, safety or otherwise endanger public safety;
>
> 2. That the regulations will provide reasonable protection to the visual environment while providing adequate conditions for meeting sign users' needs;
>
> 3. That incompatibility between signs and their surroundings will be reduced;
>
> 4. That both the public and sign users will benefit from signs having improved legibility, readability and visibility;
>
> 5. That consideration will be given to equalizing the opportunity for messages to be displayed;
>
> 6. That adequacy of message opportunity will be available to sign users without dominating the visual appearance of the area.

L.A.M.C. § 91.6201 [App. at D 1].

In fact, there is no separate set of written guidelines or goals to restrict the discretion of Cultural Affairs when it exercises its awesome gatekeeping power in controlling

what wall-sized messages may be displayed on the buildings constituting the City's skyline.

B. The City's Threats of Prosecution

After Petitioner leased a number of locations on which to place wall signs, it then erected a number of wall-sized signs without seeking a permit or mural exemption beforehand.[4] In response, the City issued citations demanding removal of the signs and threatened a number of Petitioner's lessors (the property owners leasing the locations to Petitioner for the placement of its wall signs) with criminal prosecution.

In the face of the City's enforcement actions, several of Petitioner's wall signs were removed pending the outcome of Petitioner's challenge to the Sign Ordinance. The manner in which a wall/mural sign is temporarily removed depends on whether it is painted on the building or consists of a vinyl covering stretched across the wall by a cabling system. Where the sign is painted, Petitioner has simply covered the wall with a new coat of paint, thereby obliterating the message. Where the sign consists of a vinyl covering, the vinyl has been temporarily unfastened and rolled up.

In other instances, property owners from whom Petitioner has leased sites for wall/mural signs had not

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[4] Where, as here, a law unconstitutionally imposes on a speaker the prior restraint of a permit, the speaker is not required to submit to the permitting requirement as a prerequisite to engaging in the protected conduct. Thus, a speaker may erect a sign or billboard without applying for a permit where the permitting requirement is implemented as part of a regulatory scheme that violates the First Amendment. *Shuttlesworth v. City of Birmingham, Ala.*, 394 U.S. 147, 150-51, 89 S.Ct. 935, 938, 22 L. Ed. 2d 162 (1969); *Desert Outdoor Advertising, Inc. v. City of Moreno Valley*, 103 F.3d 814, 818 (9th Cir. 1996), *cert. denied*, 522 U.S. 912 (1997).

received citations at the time Petitioner filed its Motion for Preliminary Injunction (the "Motion") or, after receiving citations and/or threats of prosecution, indicated a willingness to allow Petitioner to challenge the constitutionality of the City's ordinance.

C. Procedural History

Petitioner's First Amended Complaint below (the "Complaint") asserts a facial and as-applied challenge to the Sign Ordinance under the First Amendment to the extent the Sign Ordinance restricts large, wall-sized displays. The Complaint states claims for declaratory and injunctive relief, discriminatory enforcement, and damages for deprivation of civil rights.

On February 8, 2001, Petitioner[5] filed its Motion seeking to restrain the City from enforcing the Sign Ordinance against approximately 28 of Petitioner's wall sign locations. The District Court issued its order denying Petitioners' Motion on May 30, 2001. (App. C.) The District Court based its denial of the Motion solely on its determination that Petitioner "lack[s] standing to challenge the constitutionality of the CAC [the Cultural Affairs Commission]." (App. at C 26.)

On June 29, 2001, Petitioner filed its Notice of Appeal. On February 14, 2002, the United States Court of Appeals for the Ninth Circuit issued its decision affirming the ruling of the District Court. (App. A.) While the Court of Appeals reversed on the issue of standing, finding that Petitioner did in fact have standing to challenge the Sign Ordinance, it affirmed on an alternative ground, finding that the standards for the issuance of a preliminary injunction had not been met. (App. at A 4.) The Court

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[5] As noted above, the plaintiffs below consisted of Petitioner and Virtual Media, Inc., which is not a petitioner here.

ruled that Petitioner had failed to make a showing that the Sign Ordinance is content-based, and had similarly failed to establish that Cultural Affairs, in deciding whether to grant exemptions, exercised unfettered discretion. (App. at A 4.)

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISION IN *METRO-MEDIA, INC. v. CITY OF SAN DIEGO*

In the proceedings below, Petitioner sought a declaration that the Sign Ordinance is unconstitutional on its face because it restricts speech on the basis of its content, and because the City had failed to prove that its regulatory scheme can withstand strict scrutiny. It is fundamental under *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981), that a sign ordinance cannot be viewed as content-neutral where it grants exemptions to specified categories of signs based on the content of their messages.

Here, the City's Sign Ordinance severely restricts, and virtually bans, wall-sized signs, but affords an exemption to certain signs, denominated "mural signs." Under the terms of the Sign Ordinance, "mural signs" are those signs "made integral with a wall," containing a "written message" ... "which does not exceed three percent of the total area of the sign," *and which **have been approved as "murals" by the five-member Cultural Affairs Commission.*** In other words, a wall sign becomes a "mural," and correspondingly becomes exempt from the prohibitions and restrictions of the Sign Ordinance[6]

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[6] As noted above, pursuant to § 91.6217.2 of the Sign Ordinance, once Cultural Affairs determines a display can be posted as a "mural," it

applicable to other wall signs and off-premises signs, merely upon its approval by Cultural Affairs as a "mural."

A regulatory scheme under which wall signs are effectively banned unless they receive in advance the approval of Cultural Affairs, a committee that does not reach its determination to approve or disapprove a sign until it has examined the sign's content, authorship and sponsorship, must be found unconstitutional unless the City carries its burden of demonstrating that its regulatory scheme can withstand strict scrutiny.

Rather than demonstrate that the restrictions of its Sign Ordinance further any compelling governmental interest, or show that it has carefully assessed the First Amendment implications of allowing a small committee to choose the messages that will be most prominently displayed on the City's skyline, the City has touted the *results* of its censorship. In its Answering Brief before the Court of Appeals, the City noted that Los Angeles "has often been called the 'Mural Capital of the World,'" and that "murals are an integral part of the cultural expression of the City and have become a permanent part of the City's cultural identity." However desirable such a cityscape might be in the view of the City, the "cultural expression" created through an array of murals does nothing to advance values of freedom of expression under the First Amendment. First Amendment concerns are acutely implicated where the government seeks to license speech for the purpose of creating a visual landscape that is, *in its view*, a laudable reflection of a municipality's "cultural affairs." And these concerns are particularly acute where the government creates this rendition by choosing among speakers and messages.

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becomes exempt from the restrictions otherwise applicable to all off-premises signs imposed under §§ 91.6210 and 91.6218.

Thus, the City here has ignored the degree to which its sign restrictions are antithetical to First Amendment values. At bottom, the City is choosing the content, authorship, sponsorship and viewpoints that make up the messages delineating its skyline, and doing so through the vehicle of a five-person committee that determines who may speak, and who is to be silenced. Whatever cultural values are embraced through such a process, those values are hardly consistent with the political culture of robust debate that has flourished under the protective cover of the First Amendment.[7]

This Court has left no doubt that the First Amendment applies to a regulatory scheme restricting billboards; accordingly, there is no question that a law banning or restricting the erection of wall signs and billboards burdens speech and is unconstitutional unless it passes the appropriate level of scrutiny under First Amendment analysis. *Metromedia*, 453 U.S. at 520 ("There can be no question that a prohibition on the erection of billboards infringes freedom of speech.").

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[7] Were the City to argue that its vision of a "cultural affairs" skyline is the governmental interest in aesthetics furthered by Sign Ordinance, it could not establish such a claim. There is in actuality no coherent vision of the City's cultural identity implemented through the murals approved by Cultural Affairs. Certain of the Commission's members have at times disfavored commercial advertisements, though nowhere does the Sign Ordinance provide that approval of a mural is to turn on whether its message conveys commercial or noncommercial speech. Certain commercial ad campaigns (notably the "Think Different" campaign mounted by Apple Computers) have been a popular mainstay of Los Angeles murals. Distinctly political speech has also made its way into murals, such as a large display welcoming the Democratic National Convention which took place in the summer of 2000 (this display not only promoted a political party, but in addition prominently featured the logo of certain corporate sponsors). Other murals have displayed cultural messages favored by Cultural Affairs.

Indeed, the Ninth Circuit itself long ago recognized that communicating through signs and posters is "virtually pure speech." *Baldwin v. Redwood City*, 540 F.2d 1360, 1366 (9th Cir. 1976), *cert. denied sub nom. Leipzig v. Baldwin*, 431 U.S. 913 (1977).

The City has argued that its mural exemption furthers the City's interest in aesthetics, stimulates tourism, and fosters and improves the City's cultural and civic identity, as well as the quality of urban life. The latter variations on the governmental interest in aesthetics may constitute *substantial* governmental interests, but they do not constitute *compelling* governmental interests of the sort necessary to withstand strict scrutiny. *North Olmstead Chamber of Commerce v. City of North Olmstead*, 86 F. Supp.2d 755, 767 (N.D. Ohio 2000) (while this Court "has determined that 'safety' and 'aesthetics' are 'substantial' interests [citing *Metromedia*], this Court has never determined that these interests are compelling enough to justify content-based restrictions on fully protected speech."). In the proceedings below, the City never identified a compelling governmental interest that might be furthered by its Sign Ordinance.

Because the application form utilized by Cultural Affairs requires the applicant for a mural exemption to describe the content of the proposed message, there can be no genuine dispute here that Cultural Affairs considers a sign's content before reaching its decision on whether to confer the status of a mural on the sign. But the application goes further, requiring the applicant to identify the "artist" who has designed the message, the artist's past work and the sponsor supporting the proposed sign. (App. E.) Petitioner's challenge to the Sign Ordinance thus raises the constitutional propriety of adopting an exemption based on consideration of the speaker's message, identity and sponsorship, not to mention the content of the message

itself (as well as the fact, addressed below, that the Sign Ordinance confers unbridled discretion on Cultural Affairs in exercising its powers).

In *Metromedia*, this Court determined that the presence of such content-based exemptions, regardless of the inherent constitutionality of the exemptions themselves, renders an ordinance a content-based regulation of speech. The Court considered several categories of exemptions in the challenged ordinance, all of which were triggered by the content of the message displayed. None of the exemptions went so far as the mural exemption of the Sign Ordinance, in that none conferred on a small group the power to bestow a blanket exemption from the heavy restrictions on speech imposed by San Diego's anti-billboard ordinance. Thus, in conferring on Cultural Affairs the ability to grant such exemptions, the City took the Sign Ordinance beyond the realm of a traditional time, place and manner regulation and rendered it, indisputably, a content-based regulation.

Despite Petitioner's delineation of the mural exemption, the Court of Appeals ruled that Petitioner failed to show that the Sign Ordinance is content-based. Similarly, the City contended that the Sign Ordinance may be judicially tested under a less stringent time, place and manner analysis. This Court, however, rejected such an argument in *Metromedia* due to the presence of exemptions in a sign ordinance:

> Finally, we reject appellees' suggestion that the ordinance may be appropriately characterized as a reasonable "time, place, and manner" restriction. The ordinance does not generally ban billboard advertising as an unacceptable "manner" of communicating information or ideas; rather,

> it permits various kinds of signs. Signs that are banned are banned everywhere and at all times. [¶] It is apparent as well that the ordinance distinguishes in several ways between permissible signs at a particular location by reference to their content. Whether or not these distinctions are themselves constitutional, they take the regulation out of the domain of time, place, and manner restrictions.

Metromedia, 453 U.S. at 516-517.

Thus, by challenging the Sign Ordinance, Petitioner satisfied whatever burden was incumbent upon it to demonstrate that the Sign Ordinance regulates speech on the basis of content. Contrary to the conclusion of the Court of Appeals, to prevent injunctive relief, the burden was on the City to demonstrate that its Sign Ordinance can pass muster under whatever level of First Amendment scrutiny is applicable. Once a speaker shows that a law imposes restrictions on the freedom of speech, the government bears the burden of establishing the law's constitutionality in all instances, not merely in those instances where the law is content-based. *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 816 (2000) ("When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.").

Where, however, restrictions on speech are content-based, the government's regulation of speech is presumptively invalid under the First Amendment. *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 382 (1992). Nor does a speaker, to establish harm, need to show more than denial of the right to speak. Where, as here, a person is denied the right of speech, harm is presumed. *Elrod v.*

Burns, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). Absent a showing by the City that its Sign Ordinance can withstand strict scrutiny, the Sign Ordinance must be declared unconstitutional. Under circumstances where irreparable and immediate harm can be presumed, and the City fails to address the elements of a strict scrutiny analysis, there is room for but one conclusion: additional harm pending trial can be deterred only by the issuance of a preliminary injunction.

Moreover, the District Court had no latitude in its discretion to avoid ruling on the Sign Ordinance's constitutionality. Viewed from a procedural standpoint, once a law burdening speech was placed before the District Court by means of a facial attack, the District Court was required to address the issue of its constitutionality. And because the law was shown to constitute a content-based regulatory scheme burdening noncommercial as well as commercial speech, the District Court was required to strike it in its entirety unless the government carried its burden of demonstrating that the law can withstand strict scrutiny. As this Court observed in *Metromedia*:

> Because regulation of the noncommunicative aspects of a medium often impinges to some degree on the communicative aspects, it has been necessary for the courts to reconcile the government's regulatory interests with the individual's right to expression. '[A] court may not escape the task of assessing the First Amendment interest at stake and weighing it against the public interest allegedly served by the regulation.'

Metromedia, 453 U.S. at 502 (quoting *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 91 (1977), which in turn quotes *Bigelow v. Virginia*, 421 U.S. 809, 826 (1975)).

Thus, when the Court of Appeals found that Petitioner did not meet the merits requirements for the issuance of a preliminary injunction because it "failed to produce evidence indicating that the Sign Ordinance's provision for 'mural signs' is content-based...," the Court reached a conclusion conflicting with this Court's decision in *Metromedia*.

However much the City might wish to have its skyline record a reflection of the City's "cultural affairs" as envisioned by a five-member Cultural Affairs Commission, an array of prominent messages chosen by the government deeply jeopardizes First Amendment values. As this Court observed in the context of a different medium of expression:

> At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence. *Our political system and cultural life rest upon this ideal.* [Emphasis added; citations omitted.] Government action that stifles speech on account of its message, or that requires the utterance of a particular message favored by the Government, contravenes this essential right.

Turner Broadcasting System, Inc. v. Federal Communications Commission, 512 U.S. 622, 641 (1994).

A regulatory scheme that grants a body, such as Cultural Affairs, the power to choose who among applicants may be allowed to erect messages on the City's

skyline implements a landscape of government controlled speech and viewpoints, stifling in the process not only heresy and dissent, but even debate. "[T]he First Amendment, subject only to narrow and well-understood exceptions, does not countenance governmental control over the content of messages expressed by private individuals. [Citations omitted.] Our precedents thus apply the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content." *Turner Broadcasting,* 512 U.S. at 642. The decision of the Court of Appeals, which allowed the City to avoid the exacting scrutiny demanded by First Amendment principles, thus conflicts with *Metromedia* and other of this Court's decisions for the foregoing reasons.

II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS REQUIRING OBJECTIVE AND CERTAIN GUIDELINES WHERE THE GOVERNMENT IMPOSES A PRIOR RESTRAINT ON SPEECH

The Sign Ordinance imposes a prior restraint on speech in that the City bans signs, or alternatively requires a speaker to obtain a permit before they may be erected. Wall-sized signs for the sides of multi-story buildings – the signs and displays that the City now finds to be a reflection of its "cultural affairs" – are generally prohibited unless Cultural Affairs grants a mural exemption. Thus, the Sign Ordinance provides that a would-be speaker is barred from posting a wall-sized message in Los Angeles unless the speaker first obtains the consent of Cultural Affairs.

It is fundamental under such circumstances that without the safeguard of definite, certain and ascertainable criteria to govern the exercise of Cultural Affairs' discretion, the Sign Ordinance violates the First

Amendment. This Court has long held[8] that "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969) ("a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional."); *City of Lakewood v. Plain Deale Publishing Co.*, 486 U.S. 750, 755-58 (1988). The right to be free from such prior restraints on expression is so fundamental to our system of constitutional limitations on the power of government that "a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require a license." *Shuttlesworth*, 394 U.S. at 151.

Indeed, in *Metromedia*, Justice Brennan in his concurring opinion notes that "[a]ccording such wide discretion to city officials to control the free exercise of First Amendment rights is precisely what has consistently troubled this Court in a long line of cases starting with *Lovell v. Griffin*, 303 U.S. 444 (1938)." *Metromedia*, 453 U.S. at 537-38.

Notwithstanding the unfettered discretion granted to the members of Cultural Affairs, the Court of Appeals concluded, without analysis or discussion, that Petitioner had "failed to demonstrate that the Commission enjoys unfettered discretion to accept or reject signs." (App. at A 4.) The Court of Appeals reached this conclusion despite

---

[8] *See, e.g., Saia v. New York*, 334 U.S. 558, 559-60 (1948); *Niemotko v. Maryland*, 340 U.S. 268, 271-72 (1951); *Staub v. City of Baxley*, 355 U.S. 313, 325 (1958).

the fact that, after Petitioner pointed out the absence of any guidelines in the text of the Sign Ordinance, and included in the record minutes from Cultural Affairs' meetings over the last seven years showing that the Commission members themselves complained that there were no guidelines (discussed below), the only criteria identified by the City consisted of the provisions of the Statement of Purpose applicable generally to the City's regulation of all outdoor signs. In fact, the City was never able to identify any guidelines limiting or controlling Cultural Affairs' discretion to grant or deny applications for mural *exemptions* from the restrictions of the Sign Ordinance.

Under these circumstances, the Sign Ordinance lacks sufficiently definite and objective criteria to guide the exercise of the awesome power the City confers on Cultural Affairs – the power to choose who may speak and post messages on the sides of the City's buildings. The Court of Appeals reached a conclusion in conflict with this Court's decisions in *Shuttlesworth* and *Metromedia* when it failed to recognize that, whatever guidance the generally applicable Statement of Purpose may provide to limit the restrictions contained in the City's regulatory scheme as a whole, it cannot as a matter of logic at the same time apply to guide decisions to determine what signs should be *exempted* from the same regulatory controls.

The confusion and disparate treatment – and, inevitably, content- and viewpoint-based discrimination – that necessarily flows from such indefinite and uncertain guidelines is readily apparent in meeting minutes that memorialize Cultural Affairs' deliberations. Early on, in January 1995, Commission members voiced their confusion concerning the factors they should consider in determining whether a sign may be qualified as a mural. One Commissioner asked outright what factors can be reviewed, referencing "color" and "arrangement." Another

Commissioner curiously argued that the decision has "nothing to do with artistic value."

Five years later, in a July 2000 meeting, Commissioners were still raising concerns over what criteria should be applied. The Commission President complained that there were still no written guidelines for the Commission's use. Another Commission member argued in response that approval should not be withheld just "because guidelines had not yet been established...," but in the same discussion commented that the murals "celebrated the Democratic convention."

Even though the City has had nearly a decade to adopt sufficient guidelines, the decision-making members of Cultural Affairs have not yet developed or been provided with any definite or certain criteria to govern their discretion. In the absence of sufficiently objective criteria, it is impossible to know whether the exercise of the mural exemption power furthers any particular governmental interest, much less whether it furthers a compelling one. As a result, there is no objective standard for determining whether the exemption might further the interest of aesthetics. Nor is the Commission constrained by any guidelines that might further traffic safety. Indeed, it is hard to imagine how either the goal of aesthetics or traffic safety could be furthered by conferring on Cultural Affairs the power to grant *exemptions* from the City's otherwise applicable restrictions, thereby allowing Cultural Affairs to determine what messages should be *added* to the City's skyline. Undoubtedly for this reason, the Sign Ordinance merely provides that the exercise of the power to grant mural exemptions shall not be in conflict with the goals embraced in the Statement of Purpose.

Ostensibly to further the governmental interest of safety, one of the restraints on signs in Los Angeles is the

requirement that signs be reviewed by both the Department of Transportation and by the Department of Building and Safety. However, Cultural Affairs exercises the power to exempt a speaker from even these requirements. The application form submitted by Petitioner, in paragraphs 11 and 12, contains confirmation that Cultural Affairs is granted this broad discretion:

> 11. INPUT AND DOCUMENTATION, DEPARTMENT OF BUILDING AND SAFETY SIGN PRE-INSPECTION, if applicable (*as determined by Cultural Affairs Department* . . .) . . ..
>
> 12. INPUT AND DOCUMENTATION, DEPARTMENT OF TRANSPORTATION, if applicable (*as determined by Cultural Affairs Department Staff and/or Department of Building and Safety* . . .) [emphasis added].

(App. at E 2.)

Thus, Cultural Affairs is granted the power to exempt a speaker from clearance by the Department of Transportation and the Department of Building and Safety, yet nowhere are there any guidelines to determine which speakers or signs are to be exempted from such requirements, or any assessment as to why Cultural Affairs might be qualified to exercise such a power.

In the proceedings below, a lobbyist active in Los Angeles submitted a declaration stating that there were still no written guidelines at the time Petitioner filed its Motion. Thus, because they are unrestrained, Commission members have the leeway to favor certain wall-sized messages and disfavor others. The lack of guidelines has led to such results as the approval of a mural for Wells Fargo Bank

because otherwise the Bank refused to locate a branch in the economically disadvantaged neighborhood near where the wall sign was to be erected.

This Court has recognized that the discretion to approve or deny free speech rights raises significant dangers of content-based censorship. *See, e.g., City of Lakewood*, 486 U.S. at 759. The lack of guidelines other than the requirement that Cultural Affairs conclude that any proposed mural sign is not inconsistent with the broad and vague principles described in the Statement of Purpose obscures the favoring of particular messages and prevents any reviewing court from evaluating whether the decision to approve a particular sign is based on content-neutral factors or is simply a disguised method of censorship, or a vehicle for implementing the display of certain City-approved viewpoints. As stated by this Court in *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123, 131 (1992):

> If the permit scheme involves appraisal of facts, the exercise of judgment, and the formation of an opinion by the licensing authority, the danger of censorship and of abridgment of our precious First Amendment freedoms is too great to be permitted.

Assuming the City is correct in citing the Statement of Purpose as the only set of guidelines governing the exemption-granting discretion of Cultural Affairs, then Cultural Affairs is free to deny an applicant if it determines that a particular sign does not "promote safety and welfare." It is also free to deny a would-be speaker the right to post a message if it concludes that "both the public and sign users" will not "benefit from a sign's having improved legibility, readability and visibility."

Furthermore, Cultural Affairs must consider whether a sign will not detract from the goal of "equalizing the opportunity for messages to be displayed."

The latitude and ambiguity inherent in such vague standards allows Cultural Affairs to approve or deny a would-be speaker for any reason, or for no reason. For example, at its March 5, 1998 meeting, an outdoor display company sought permission to erect an advertisement for Apple Computer bearing a picture of opera diva Maria Callas. The Commission rejected the ad, calling it a "blight on the distinguished architectural assemblage and approach to downtown [Los Angeles]." Two years later, a nearly identical Apple Computer ad was approved for the wall of a nearby building. And on the same site where the ad for Apple Computers was denied in 1998, an ad for Gap Jeans was allowed only six months later.

To permit a governmental body to allow or disallow speech for the purpose of implementing the general notions of aesthetics and cultural values only after reviewing proposed messages is without doubt to place the government in a position of discriminating against speech on the basis of its content. It is also to sanction absurd and illogical results for which Cultural Affairs cannot be held accountable.

The foregoing examples amply demonstrated, certainly for purposes of requiring a rebuttal by the City, that the exemption-granting power conferred on Cultural Affairs is unconstrained by any objective criteria. The number and variety of factors considered; the vague and indefinite guidelines of the Statement of Purpose; the approval of a sign as a lure to commercial development; the promotion of a national political party holding its nominating convention in Los Angeles; all demonstrate conclusively that unfettered discretion is granted to

Cultural Affairs in the consideration of whether to allow speakers to post their messages. In *Shuttlesworth* and other cases in its line, this Court has recognized that the necessity to obtain approval from a governmental agency granted the sort of leeway enjoyed by Cultural Affairs here constitutes an intolerable restraint on the exercise of First Amendment freedoms. For this reason, the Court of Appeals reached a conclusion in conflict with the decisions of this Court.

CONCLUSION

In affirming the District Court on the alternative ground that Petitioner had failed to demonstrate that the merits test for an injunction was satisfied, even in light of the City's failure to offer any evidence or argument that the Sign Ordinance can withstand strict scrutiny, the United States Court of Appeals for the Ninth Circuit rendered a decision in conflict with the decisions of this Court. In the face of Petitioner's request for a preliminary injunction, which required the District Court to assess the constitutionality of the Sign Ordinance, the City failed to meet its burden under the First Amendment of demonstrating that its Sign Ordinance can withstand strict scrutiny, and for that reason alone the preliminary injunction should have issued. Petitioner placed before the courts below a regulatory scheme that confers upon a five-member citizens commission the power to choose among speakers.

In the area of First Amendment culture and values, it is this delegated power that must be policed most vigilantly, for under its auspices the government is unconstrained in advancing favored speakers and viewpoints. Without the clearest and most certain of limitations on its exercise, such a power renders a regulatory scheme pervasively antithetical to the First Amendment.

Accordingly, Petitioner respectfully submits that a writ of certiorari should issue to review the decision of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

MAY 14, 2002

MADISON S. SPACH, JR.
Counsel of Record
SPACH & ASSOCIATES, P.C.
Counsel for Petitioner Regency Outdoor Advertising, Inc.

Not For Publication

FILED
FEB 14, 2002
U.S. Court of Appeals
By Cathy A. Catterson, Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 01-56130
D.C. No. CV-00-09913-FMC

REGENCY OUTDOOR ADVERTISING, INC., a California corporation; VIRTUAL MEDIA GROUP, INC., a California corporation,

Plaintiffs-Appellants,

v.

CITY OF LOS ANGELES CALIFORNIA, a municipal corporation,

Defendant-Appellee,

and

DOES 1 THROUGH 10, Inclusive,

Defendant.

Appeal from the United States District Court
for the Central District of California
Florence Marie Cooper, District Judge, Presiding

MEMORANDUM*

Argued and Submitted January 14, 2002
Pasadena, California

Before: SCHROEDER, Chief Judge, McKEOWN, and CUDAHY,1 Circuit Judges.

Regency Outdoor Advertising, Inc. and Virtual Media Group, Inc. (collectively, "Outdoor") appeal from the district court's order denying preliminary injunctive relief. We have jurisdiction pursuant to 28 U.S.C. § 1292(a)(1) and we affirm. Because the parties are familiar with the factual and procedural background, we need not detail it here.

The district court denied Outdoor's motion for a preliminary injunction because it concluded that Outdoor lacked standing. The court reasoned that because none of the compliance orders issued by the City of Los Angeles ("the City") pursuant to its outdoor sign ordinance ("the Sign Ordinance") were for mural violations, Outdoor had suffered no injury. To have standing, Outdoor must satisfy three elements: (1) injury in fact, (2) the injury was reasonably caused by the challenged conduct, and (3) likelihood that the relief requested, if granted, will redress the injury. *See Desert Outdoor Advertising v. City of Moreno Valley*, 103 F.3d 814, 818 (9th Cir. 1996).

Based on the alleged impact of the Sign Ordinance on Outdoor, the citation that recited the mural requirements, the response of Outdoor's lessees, plus other alleged

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

1 The Honorable Richard Cudahy, Senior United States Circuit Judge for the United States Court of Appeals, Seventh Circuit, sitting by designation.

injury, Outdoor has alleged injury that is directly related to the City's enforcement of the Sign Ordinance, thus satisfying the first two prongs of the standing test. Outdoor also meets the third prong. Outdoor asks that the entire Sign Ordinance be struck down as unconstitutional. If such relief were granted, it would redress Outdoor's injury. Accordingly, Outdoor has standing to bring its First Amendment challenge.

Although we disagree with the district court with respect to standing, we affirm on alternative grounds. Outdoor does not meet the merits requirement for preliminary injunctive relief. *See Mayweathers v. Newland*, 258 F.3d 930, 938 (9th Cir. 2001) (listing criteria for preliminary injunctive relief). At this juncture, Outdoor has failed to produce evidence indicating that the Sign Ordinance's provision for "mural signs" is content-based. *See Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 521 (1981) (holding that content-based exception to city sign ordinance rendered entire ordinance unconstitutional). And, to the extent that mural signs must be approved by the Cultural Affairs Commission, Outdoor has failed to demonstrate that the Commission enjoys unfettered discretion to accept or reject signs. *See City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 755 (1988) ("licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint. . . .").

For the reasons stated above, we conclude that the district court did not abuse its discretion in denying preliminary injunctive relief.

AFFIRMED.

JUDGMENT

FILED
MAR 13, 2002
Clerk of the District Court
Central District of California
By _____ Deputy

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 01-56130
CT/AG#: CV-00-09913-FMC

REGENCY OUTDOOR ADVERTISING, INC., a California corporation; VIRTUAL MEDIA GROUP, INC., a California corporation

Plaintiffs-Appellants

v.

CITY OF LOS ANGELES CALIFORNIA, a municipal corporation

Defendant-Appellee

and

DOES 1 THROUGH 10, Inclusive

Defendant

APPEAL FROM the United States District Court for the Central District of California, Los Angeles.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California, Los Angeles and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED

Filed and entered February 14, 2002

A True Copy
Cathy A. Catterson
CLERK OF THE COURT
ATTEST
MAR –8 2002
By: /s/Gail Nelson-Hon
Deputy Clerk

Not For Publication

FILED
FEB 14, 2002
U.S. Court of Appeals
By Cathy A. Catterson, Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 01-56130
D.C. No. CV-00-09913-FMC

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and

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Florence Marie Cooper, District Judge, Presiding

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1 The Honorable Richard Cudahy, Senior United States Circuit Judge for the United States Court of Appeals, Seventh Circuit, sitting by designation.

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Although we disagree with the district court with respect to standing, we affirm on alternative grounds. Outdoor does not meet the merits requirement for preliminary injunctive relief. *See Mayweathers v. Newland*, 258 F.3d 930, 938 (9th Cir. 2001) (listing criteria for preliminary injunctive relief). At this juncture, Outdoor has failed to produce evidence indicating that the Sign Ordinance's provision for "mural signs" is content-based. *See Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 521 (1981) (holding that content-based exception to city sign ordinance rendered entire ordinance unconstitutional). And, to the extent that mural signs must be approved by the Cultural Affairs Commission, Outdoor has failed to demonstrate that the Commission enjoys unfettered discretion to accept or reject signs. *See City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 755 (1988) ("licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint. . . .").

For the reasons stated above, we conclude that the district court did not abuse its discretion in denying preliminary injunctive relief.

AFFIRMED.

A True Copy
Cathy A. Catterson
CLERK OF THE COURT
ATTEST
MAR –8 2002
By: /s/Gail Nelson-Hon
Deputy Clerk

INTERNAL USE ONLY: Proceedings include all events.
01-56130 Outdoor Advertising, et al. v. Los Angeles, CA, et al.

REGENCY OUTDOOR ADVERTISING, INC., a California corporation Plaintiff-Appellant	Paul E. Fisher, Esq. FAX 949/476-4405 Suite 550 [COR LD NTC ret] FISHER & ASSOCIATES 4675 MacArthur Court Newport Beach, CA 92660 Madison S. Spach, Jr., Esq. FAX 949/825-0714 Suite 550 [COR LD NTC ret] SPACH & ASSOCIATES 4675 MacArthur Boulevard Newport Beach, CA 92660
VIRTUAL MEDIA GROUP, INC., a California corporation Plaintiff-Appellant	Paul E. Fisher, Esq. (See above) [COR LD NTC ret] Madison S. Spach, Jr., Esq. (See above) [COR LD NTC ret]
v.	
CITY OF LOS ANGELES CALIFORNIA, a municipal corporation Defendant-Appellee	Kevin T. Ryan, City Attorney 213/485-7268 Suite 1800 [COR LD NTC ca] Office-Labor Relations City Hall East 200 N. Main Street Los Angeles, CA 90012-4131

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APPENDIX C

FILED
MAY 30, 2001
Clerk of the District Court
Central District of California
By _____ Deputy

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

REGENCY OUTDOOR ADVERTISING and VIRTUAL MEDIA GROUP, INC.,

Plaintiffs,

v.

CITY OF LOS ANGELES and DOES,

Defendant.

CV 00-9913 FMC (AIJX)

ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION; DENYING DEFENDANT'S MOTION TO STAY; AND DENYING DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

Oral Argument: May 21, 2001

I. Background

Plaintiffs Regency Outdoor Advertising and Virtual Media Group, Inc. ("Plaintiffs") engage in the business of leasing outdoor advertising space to the public. Plaintiffs' signs are located throughout Southern California in both commercial and industrial zones, typically on property leased by Plaintiffs for such purposes. Plaintiffs' signs are classified as "off-premises" signs because they do not advertise goods or services available on the premises where the signs are located.1 Rather, the signs are available for a variety of commercial and non-commercial messages, including political, religious, charitable and public service messages. The content of these signs changes periodically, and the signs are therefore a forum for the expression of ideas.

Defendant City of Los Angeles ("Defendant" or "the City") regulates such signs pursuant to Los Angeles Municipal Code §§ 91.6201 *et seq.* ("the Sign Ordinance"). The City has also adopted a "Sign Manual" pursuant to which it seeks to implement the provisions of the Municipal Code.2

Plaintiffs allege that the Sign Ordinance makes impermissible content-based distinctions between off-premises and on-premises signs. Specifically, the City attempts to keep off-premises signs from being constructed near the freeways, whereas numerous on-site signs are freely allowed within the same geographic area.

---

1 This is in contrast to "on-premises" signs, which advertise goods and services available on the premises where such signs are located.

2 The "Sign Ordinance" and the "Sign Manual" will hereinafter collectively be referred to as the "Sign Ordinance."

Plaintiffs also allege that the City makes impermissible distinctions between wall signs and mural signs, frequently allowing mural signs in areas where wall signs are not permitted.3 Mural signs are not subjected to the restrictions placed on wall signs.4 If the sign qualifies as a "mural sign" under the Ordinance, it must receive the additional approval of the City's self-appointed Cultural Affairs Commission ("CAC" or "the Commission"). Plaintiffs claim the Commission is free to approve or disapprove signs without any objective criteria, "exercising complete and unfettered discretion to determine what signs are appropriate and permissible for viewing...."5 (First Amended Complaint ("FAC"), ¶ 13.)

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3 Under the Ordinance, a "wall sign" is defined as "[a]ny sign attached to, painted on or erected against the wall of a building or structure, with the exposed face of the sign in a plane approximately parallel to the plane of the wall." LAMC § 91.6203. A "mural sign" is defined as a sign "which is applied to and made integral with a wall, the written message of which does not exceed three percent of the total area of the sign, and which has been approved pursuant to Section 92.6216 of this code." *Id.* (July 2000 Ed. of the Sign Ordinance, Motion for Preliminary Injunction, Ex. 1, pp. 835-836.)

4 "Mural signs shall not be required to comply with the provisions of Sections 91.6209 (regulating wall signs) and 91. 6220 (regulating off-site signs)." LAMC § 91.6216(b). (Prelim. Inj., Ex. 1, p. 850.)

5 Section 92.6216(a) of the Ordinance provides: "Approval for mural signs shall be obtained from the Cultural Affairs Commission. The placement, height, and overall area of a mural sign shall be approved by the Cultural Affairs Commission. In making its determination the Cultural Affairs Commission shall find that the proposed sign does not conflict with the purposes and objectives set forth in Section 92.6201(b) of this division."

Section 91.6201(b) provides: "The purpose of this division is to promote public safety and welfare by regulating signs in keeping with the following objectives: 1. That the design, construction, installation, repair and maintenance of signs will not interfere with traffic safety or otherwise endanger public safety; 2. That the regulations will provide

Plaintiffs allege that they have leased several sites within the City for placement of signs and, based on the Sign Ordinance, cannot post their signs without the Commission's approval.

On January 5, 2001, Plaintiffs filed their First Amended Complaint for declaratory and injunctive relief and for monetary damages for violations of their civil rights. Plaintiffs contend the Sign Ordinance is unconstitutional on its face and as applied because it abridges rights secured by the First and Fourteenth Amendments. Specifically, the Sign Ordinance: (a) impermissibly discriminates in favor of commercial speech, which is permitted on premises, over non-commercial speech, which is generally prohibited or severely restricted; (b) impermissibly distinguishes between sign messages based on their content; (c) constitutes an unlawful prior restraint of speech; (d) denies Plaintiffs equal protection under the laws in that it deprives Plaintiffs of the same free speech rights that identical land owners are allowed for on-premises signs; and (e) vests virtually unfettered discretion in City officials to deny applications for such signs.

Plaintiffs also claim that unless restrained by the Court, the City will continue to enforce and threaten to enforce the Sign Ordinance against Plaintiffs, compelling the removal of existing signs and prohibiting the

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reasonable protection to the visual environment while providing adequate conditions for meeting sign users' needs; 3. That incompatibility between signs and their surroundings will be reduced; 4. That both the public and sign users will benefit from signs having improved legibility, readability and visibility; 5. That consideration will be given to equalizing the opportunity for messages to be displayed; 6. That adequacy of message opportunity will be available to sign users without dominating the visual appearance of the area."

placement of additional signs on leaseholds already obtained by Plaintiffs.

On February 8, 2001, Plaintiffs moved this Court for a preliminary injunction restraining Defendant City of Los Angeles from "hindering or interfering in any way with the operation and maintenance of wall/mural signs . . . which locations Plaintiffs have leased within the City of Los Angeles." (Motion for Prelim, Inj., ii: 10-12.)

On February 20, 2001, the City filed a Motion to Stay and/or Dismiss Plaintiffs' First Amended Complaint.

After considering the parties' written and oral arguments, the Court issues the following decision:

II. Defendant's Motion to Stay Plaintiffs' FAC

Defendant argues that the Court should abstain from hearing Plaintiffs' claims pursuant to the *Pullman*,6 *Younger*,7 and/or *Colorado River*8 abstention doctrines. Defendant claims that a pending state court criminal case charging Plaintiff Regency Outdoor Advertising Agency with violating the Sign Ordinance at its 1603 So. San Pedro Street location warrants abstention because the 1603 So. San Pedro Street site is part of the instant case.9

After reviewing Defendant's arguments, the Court hereby denies Defendant's Motion to Stay Plaintiffs' FAC.

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6 *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941).

7 *Younger v. Harris*, 407U.S. 37 (1971).

8 *Colorado River Conservation Dist. v. U.S.*, 424 U.S. 800 (1976).

9 *People v. Regency Outdoor Advertising Agency, West Hollywood Properties, and Drake Kennedy,* Case No. 9CR01496, was filed December 14, 1999 and is presently pending in the Los Angeles Municipal Court.

In making its determination, the Court is mindful of the fact that "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule." *World Famous Drinking Emporium v. City of Temple*, 820 F.2d 1079, 1082 (9th Cir. 1987). "Absent significant countervailing interests, the federal courts are obligated to exercise their jurisdiction." *Id.*

A. *Younger* Abstention

The United States Supreme Court in *Younger v. Harris*, 401 U.S. 37 (1971) held that federal courts may not enjoin pending state court criminal proceedings. Under Younger and its progeny, abstention is appropriate in favor of a state proceeding if: (1) the state proceedings are ongoing; (2) the proceedings implicate important state interests; and (3) the state proceedings provide an adequate opportunity to raise federal questions. *Adam v. Hawaii*, 235 F.3d 1160, 1163 (9th Cir. 2000).

Plaintiffs list seven sites in their FAC where the City has issued citations for alleged violations of the Sign Ordinance. The 1603 So. San Pedro Street location, which is the subject of the criminal proceeding, is not included in Plaintiffs' FAC. Nothing in Plaintiffs' FAC, therefore, is related to the pending state court proceeding. Moreover, the state court proceeding consists of a single municipal court misdemeanor complaint concerning a single sign. Regency's defense in that action is based primarily on its contention that a valid permit was issued for the site in question over twenty years ago. If the state court makes the factual determination that a valid permit was issued, it may not address Plaintiffs' constitutional concerns. The Court concludes that the state proceedings do not provide an adequate opportunity for Plaintiffs to raise their First Amendment concerns, and *Younger* abstention does not apply.

B. *Pullman* Abstention

"*Pullman* abstention is an equitable doctrine that allows federal courts to refrain from deciding sensitive federal constitutional questions when state law issues may moot or narrow the constitutional questions." *San Remo Hotel v. City and County of San Francisco*, 145 F.3d 1095, 1104 (9th Cir. 1998). *Pullman* abstention is appropriate if: (1) the complaint touches a sensitive area of social policy into which the federal courts should not enter unless there is no alternative adjudication; (2) a definitive ruling on the state issues by a state court could obviate the need for constitutional adjudication by the federal court; and (3) the proper resolution of the potentially determinative state law issue is uncertain. *Sinclair Oil Corp. v. County of Santa Barbara*, 96 F. 3d 401, 409 (9th Cir. 1996).

As discussed above, Plaintiffs' Complaint does not concern the 1603 So. San Pedro site. Additionally, because First Amendment issues are at the very heart of the present controversy, *Pullman* abstention would be inappropriate. *See, e.g. Santa Fe Springs Realty Corp. v. City of Westminster*, 906 F. Supp. 1341, 1354 (C.D. Cal. 1995) (*Pullman* abstention inappropriate where owner of adult cabaret brought suit challenging city's denial of a conditional use permit because First Amendment issues were at the core of the controversy).

C. *Colorado River* Abstention

Under the *Colorado River* doctrine, federal courts may decline to exercise their jurisdiction out of deference to pending state court proceedings, but only under truly exceptional circumstances. *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 818-819 (1976); *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983). Otherwise, federal courts have a "virtually unflagging obligation ... to exercise the

jurisdiction given them." *See Colorado River*, 424 U.S. at 817. In determining whether it should stay a federal proceeding, the Court looks to the following factors: 1) whether each state or federal court has exercised jurisdiction over the res; 2) the inconvenience of the federal forum; 3) the desirability of avoiding piecemeal litigation; 4) the order in which forums obtained jurisdiction; 5) whether federal or state law controls decisions on the merits; and 6) whether state courts can adequately protect the rights of the parties. *See 40235 Washington St. Corp. v. Lusardi*, 976 F.2d 587, 588 (9th Cir. 1992); *Nakash v. Marciano*, 882 F.2d 1411, 1415 (9th Cir. 1989). The Court, however, must not use these factors "in a pragmatic, flexible manner with a view to the realities of the case at hand." *Moses H. Cone*, 460 U.S. at 21.

Defendant's argument that the Court should abstain under *Colorado River* consists of a single conclusory sentence. It has not presented any "exceptional circumstances" justifying abstention. Furthermore, as already discussed, the Court does not believe that there is sufficient similarity between the state and federal proceedings or that the state court can adequately protect Plaintiffs' rights. *Colorado River* abstention is likewise inappropriate.

III. Plaintiff's Motion for Preliminary Injunction

A. Standard

To obtain a preliminary injunction, Plaintiffs must show either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips in their favor. *Gentala v. City of Tucson*, 213 F.3d 1055, 1060 (9th Cir. 2000).

B. Standing

In their Motion for Preliminary Injunction, Plaintiffs challenge the Sign Ordinance provisions concerning mural signs and the Cultural Affairs Commission.10 Defendant argues that Plaintiffs lack standing to bring such a challenge because Plaintiffs' signs are not "murals" as defined in the Sign Ordinance. Plaintiffs' signs exceed the three percent (3%) text limitation applied to murals, and they have not been "applied to and made integral with a wall." Rather, Plaintiffs' signs are "oversized cloth/vinyl banners," attached to the buildings by cables or cords. Because the CAC only regulates murals, Defendant argues that no case or controversy exists, and Plaintiffs' request for a preliminary injunction must be denied.

Plaintiffs, on the other hand, argue that Defendant's contention is unsupported by the record. Plaintiffs point to the Orders to Comply ("OTC") issued to signs located at 6122-6 Hollywood Boulevard, 5300 West Santa Monica Boulevard, and 1603-27 San Pedro Street as proof that their signs have been subjected to the CAC's jurisdiction. Upon careful review, however, the Court finds Plaintiffs' contention meritless.

1. Standing Requirements

To have standing, Plaintiffs must satisfy three elements: (1) they must have suffered an injury in fact; (2)

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10 Although Plaintiffs' FAC challenges the Ordinance's alleged unconstitutional distinction between on-site and off-site signs as well, this challenge does not appear in Plaintiffs' Motion for Preliminary Injunction. In their Reply Brief, Plaintiffs state, "Plaintiffs have never contended that the City may not impose different restrictions on on-site and off-site signs." (Reply, 2:3-4.) Rather, the preliminary injunction addresses the constitutionality of the Cultural Affairs Commission and the definition of "mural signs."

the injury must be fairly traceable to the City's challenged conduct and not the result of the independent action of some third party; and (3) it must be likely that the injury will be redressed by a favorable decision. *Medina v. Clinton,* 86 F.3d 155, 157 (9th Cir. 1996). Plaintiffs have the burden of establishing the elements of standing. *Los Angeles County Bar Ass'n v. Eu*, 979 F.2d 697, 701 (9th Cir. 1992). To meet this burden, Plaintiffs must clearly and specifically set forth facts sufficiently to satisfy the standing requirements. *Whitmore v. Arkansas*, 495 U.S. 149, 155-156 (1990).

2. 6122-6 Hollywood Boulevard

On June 17, 1999, an OTC was issued to Plaintiffs for their 6122-6 Hollywood Boulevard location. The OTC refers to a "40' x 100' mural sign requiring Cultural Affairs approval." (Motion for Prelim. Inj., Ex. Q.) Plaintiffs rely on this citation for support that they do in fact maintain mural signs. This citation, however, was dated June 17, 1999. Plaintiffs' FAC demonstrates that Plaintiffs' lease for this site did not begin until January 10, 2000, six months after the citation was issued. (FAC, ¶ 22.) Therefore, the citation concerning the "mural sign" was not issued to Plaintiffs and is irrelevant. Moreover, an OTC was issued to Plaintiffs for the same site on November 18, 2000, after Plaintiffs' lease for this location began. That citation refers to Plaintiffs' failure to obtain permits for two signs: a "40' wide x 80' high temporary banner ... and a 30' wide x 100' high temporary banner." (emphasis added) It makes no reference to murals or to the CAC. (Prelim. Inj., Ex. Q.)

3. 5300 West Santa Monica Boulevard

On March 17, 1999, an OTC was issued to Plaintiffs for their 5300 W. Santa Monica Boulevard site. The

citation refers to the sign as both an "off-site banner sign" and a "mural sign" requiring approval from the Cultural Affairs Commission. (Reply, Ex. I.) Criminal charges were subsequently brought against the owner of this sign after City inspectors revealed he had failed to comply with the OTC.11 The sign was found to be an "off-site banner" attached to the building by cables, and the owner was indicted for failure to comply with a valid OTC, failure to obtain required building permits, and failure to submit plans and obtain approvals. (Sur-Reply, Ex. 1.) These violations were cited in the March 17, 1999 OTC as well. The Court therefore concludes that the 5300 W. Santa Monica Boulevard sign was not a mural sign.

4. 1603-27 San Pedro Street

Finally, Plaintiffs contend that the 1603-27 San Pedro site was cited on February 8, 1999 for having "painted signs" and therefore falls within the CAC's review. (Reply, Preliminary Injunction, Ex. J.) However, in a state civil suit concerning this site,12 the Los Angeles Superior Court denied Plaintiffs' writ of mandate, stating, "Plaintiffs have produced no evidence to show that a permit has ever been issued by the City for the signs painted on the building ... the present ordinance requires a building permit for every sign...."13 (Motion to

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11 *The People of the State of California v. Iraj Nehoray,* Case No. 9CR01229, filed in Los Angeles Municipal Court, attached to Defendant's Sur-Reply, Ex. 1.

12 *West Hollywood Properties, LLC v. City of Los Angeles,* Case No. BC 216698, filed in Los Angeles Superior Court, attached to Defendant's Motion to Stay/Dismiss Plaintiff's FAC, Ex. 11.

13 Section 91.6205 of the Sign Ordinance provides, in pertinent part: "A building permit shall be obtained from the department ... for any signs and/or sign alterations.... Plans and specifications shall be submitted with the application for permit for each sign." Even signs

Stay/Dismiss, Ex. 11, p. 20.) Plaintiffs fail to present any credible evidence that the "painted signs" at this location are mural signs.

4. Plaintiffs' Remaining Sites

In addition to the three sites discussed above, the Court has reviewed all of the "Orders to Comply" issued to Plaintiffs for the signs at issue in their preliminary injunction motion. None of these citations concern "murals" or the CAC. Moreover, Plaintiffs have not rebutted Defendant's contention that all of Plaintiffs' signs exceed the 3% text limit placed on mural signs. Plaintiffs have not submitted photographs or any evidence controverting Defendant's contention that Plaintiffs' signs are not murals. With the exception of the 1603-27 San Pedro Street location, the photographs Plaintiffs filed in support of their motion concern the signs of third parties. Plaintiffs have therefore failed to clearly and specifically set forth facts sufficient to satisfy the standing requirements.

5. Plaintiffs' Remaining Argument

Plaintiffs also argue that they do not have to submit to the CAC's jurisdiction to mount a facial challenge to the constitutionality of the Sign Ordinance. Plaintiffs cite three cases in support of this proposition: *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969); *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123 (1992); and *Desert Outdoor Adver. v. City of Moreno Valley*, 103 F.3d 814 (9th Cir. 1996). These cases,

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classified as "mural signs," provides, "In addition to the requirements of this Section, mural signs shall comply with Sections 91.6201 *through 91.6205*." (Emphasis added) (Prelim. Inj., Ex. 1, pp. 837-838, 850.)

however, are materially distinguishable from the case at bar.

a. Shuttlesworth v. City of Birmingham

In *Shuttlesworth*, petitioner was convicted of violating a city ordinance that made it an offense to participate in any parade, procession, or other public demonstration without first obtaining a permit from the city commission. The ordinance provided that "[t]he commission shall grant a written permit for such parade, procession, or other public demonstration, prescribing the streets or other public ways which may be used therefore, unless in its judgment the public welfare, peace, safety, health, decency, good order, morals or convenience require that it be refused." 394 U.S. at 149-150. Without appiying for a permit, petitioner and over fifty others marched through the city streets, protesting the alleged denial of their civil rights. At the end of four blocks, the marchers were stopped by city police and arrested for violating the ordinance.

The Supreme Court in *Shuttlesworth* found the ordinance to be unconstitutional, for it "conferred upon the City Commission virtually unbridled and absolute power to prohibit any 'parade,' 'procession,' or 'demonstration' on the city's streets or public ways." *Id.* at 150. The Court noted that "a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of free expression for which the law purports to require a license." *Id.* at 151. The Court went on to say, "The Constitutional can hardly be thought to deny to one subjected to the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to its demands." *Id.* (*citing Jones v. City of Opelika*, 316 U.S. 584, 602 (1942).)

Shuttlesworth does not help the Plaintiffs. The petitioner in *Shuttlesworth* clearly had standing to sue because the ordinance was enforced against him. Here, Plaintiffs have not been "subjected to the restraints" of the portion of the Sign Ordinance in question, for none of Plaintiffs' signs are murals subject to CAC review.

b. Forsyth County, Georgia v. Nationalist Movement

In *Forsyth*, an organization filed suit challenging the constitutionality of the county's assembly and parade ordinance. The county's ordinance mandated permits for private demonstrations and other uses of public property; declared that the cost of protecting participants in such activities should be borne by the participants; and required every permit applicant to pay a fee of not more than $1000. The county administrator was empowered to adjust the fee amount "to meet the expense incident to the administration of the Ordinance and to the maintenance of public order in the matter licensed." 505 U.S. at 127.

An organization sought to demonstrate in opposition to the Martin Luther King, Jr. holiday. The county imposed a $100 fee. The fee did not include any adjustment for potential law enforcement costs but was based on the county administrator's time in issuing the permit. The organization did not pay the fee and did not hold the rally. Instead, it filed suit challenging the constitutionality of the ordinance.

In concluding the organization had standing to sue, the Court stated:

> "[I]n the area of freedom of expression an overbroad regulation may be subject to facial review and invalidation, even though its application in the case under consideration may be constitutionally unobjectionable. (citations) This exception

> from general standing rules is based on an appreciation that the very existence of some broadly written laws has the potential to chill the expressive activity of others not before the court. (citations) Thus, the Court has permitted a party to challenge an ordinance under the overbreadth doctrine in cases where every application creates an impermissible risk of suppression of ideas, such as an ordinance that delegates overly broad discretion to the decisionmaker...." (citations)

Id. at 129.

Forsyth does not support Plaintiffs' request for preliminary injunction, because, as previously observed, there is no evidence that any of Plaintiffs' existing signs are subject to the alleged unconstitutional portion of the Sign Ordinance, or that Plaintiffs have been prevented from erecting signs on any of their leased premises because of the existence of the ordinance. The foregoing quotation from Forsyth, in the abstract, would appear to support Plaintiffs' position. However, the clear holding of other decisions of the U.S. Supreme Court14 makes it clear that the exception to the standing rule in *Forsyth* applies to cases in which a plaintiff, although subject to the challenged law, has not been unconstitutionally affected by it. In the instant case, Plaintiffs have not

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14 *See, e.g., Laird v. Tatum*, 408 U.S. 1, 12-13 (1972) (although governmental action need not have direct effect on exercise of First Amendment rights, it must have caused or must threaten to cause direct injury to plaintiffs); *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 755 (1988) (although one may challenge a licensing statute as facially invalid, without first applying for a license, to have standing, a plaintiff must demonstrate that he or she is subject to the licensing law).

demonstrated that they are subject to the ordinance complained of.

Moreover, a "litigant may not ... assert the unconstitutionality of a state criminal statute 'merely because he desires to wipe it off the books or even because he may some day wish to act in a fashion that violates it.'" *Peyote Way Church of God, Inc. v. Smith*, 742 F.2d 193, 198 (5th Cir. 1984) (*citing KVUE v. Austin Broadcasting Corp.*, 709 F.2d 922, 928 (5th Cir. 1983). Rather, a party must demonstrate a realistic danger that he or she will sustain a direct injury as a result of the statute's operation or enforcement. *See Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979); *see also Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 393 (1988) (standing requires parties to have "actual and well-founded fear that the law will be enforced against them"); *Blair v. Shanahan*, 38 F.3d 1514, 1519 (9th Cir. 1994) (courts inquire whether "plaintiffs showed a reasonable threat of prosecution under the statute"). Plaintiffs present no evidence that their signs are murals or that the CAC approval requirement will be enforced against them in the immediate future.

c. Desert Outdoor Adver., Inc. v. City of Moreno Valley

Finally, in *Desert Outdoor*, billboard operators brought suit challenging a city ordinance regulating signs and structures. The ordinance regulated both on-site and off-site signs and imposed different restrictions on them. Before anyone could erect an off-site signs, the ordinance required that the person apply for a conditional use permit. City officials would grant a permit upon finding that such a display would not have a harmful effect upon the health or welfare of the general public or upon the aesthetic quality of the community. 103 F3d. at 817. Two billboard

companies constructed off-site signs without obtaining the required permits. The city brought two separate state court actions against them. The billboard companies brought suit in federal court to challenge the constitutionality of the ordinance. The city argued that the billboard companies lacked standing to challenge the ordinance.

The Ninth Circuit found the billboard companies did have standing because the city actually brought an enforcement action against them; the billboard companies' injury was directly traceable to the city's conduct in passing the ordinance; and declaring the ordinance to be unconstitutional would likely redress the companies' injuries by enabling them to maintain their signs. *Id.* at 818.

In the case at bar, Defendant has brought enforcement actions against Plaintiffs, but not for failure to seek CAC approval for their signs. Additionally, even if the Court were to declare the CAC approval requirement unconstitutional, Plaintiffs' alleged injuries would not be redressed, for none of Plaintiffs' signs are murals subject to CAC review.

The Court therefore concludes, on the record before it, that Plaintiffs lack standing to challenge the constitutionality of the CAC. Plaintiffs have failed to meet their burden of setting forth clear and specific facts sufficient to satisfy the standing requirements. There is no evidence that Plaintiffs' signs are "murals" or that the CAC has rejected any of Plaintiffs' signs. Plaintiffs' Motion for a Preliminary Injunction is denied.

IV. Defendant's Motion to Dismiss Plaintiffs' FAC

A. Standard

Defendant's motion requires the Court to determine whether Plaintiffs' First Amended Complaint states claim upon which relief may be granted. See Fed. R. Civ. P. 12(b)(6). The Court will not dismiss Plaintiffs' claims for relief unless they cannot prove any set of facts in support of their claims that would entitle them to relief. *See Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295 (9th Cir. 1998). In limiting its inquiry to the content of the Complaint, the Court must take the allegations of material fact as true and construe them in the light most favorable to the Plaintiffs. *See Western Reserve Oil & Gas Co. v. New*, 765 F.2d 1428, 1430 (9th Cir. 1985). Additionally, the Court "is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot be reasonably drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 755 (9th Cir. 1994).

B. Preliminary Issues

1. Statute of Limitations

Defendant argues that Plaintiffs' First Amended Complaint is barred by two separate statutes of limitations. First, Defendant argues Plaintiffs' claims are barred by the 90-day statute of limitations set forth in CAL. GOV'T CODE § 65009 (c)(2), which provides that legal actions filed to "attack, review, set aside, void or annul the decision of a legislative body to adopt or amend a zoning ordinance" must be "brought within 90 days after the legislative body's decision." Alternatively, Plaintiffs' suit is barred by the one-year statute of limitations applicable to 42 U.S.C. § 1983 actions. Because the Sign Ordinance was

originally enacted in 1986 and last amended in July, 1996, and Plaintiffs' FAC was not filed until October 11, 2000, Defendant argues Plaintiffs' claims are untimely.

Neither of these two statutes of limitations applies to Plaintiffs' claims. "It is doubtful that an ordinance facially offensive to the First Amendment can be insulted from challenge by a statutory limitations period." *Nat'l Adver. Co. v. City of Raleigh*, 947 F.2d 1158, 1168 (4th Cir. 1991). "Because strong policy reasons militate in favor of permitting facial challenges to statutes that impinge upon protected First Amended rights, the statute of limitations should not preclude a plaintiff from bringing a facial challenge more than one year after the statute's enactment. *Sante Fe Springs Realty Corp. v. City of Westminster*, 906 F. Supp. 1341, 1364-1365 (C.D. Cal. 1995). "[A] statute that, on its face, violates the First Amendment's guarantee of free speech inflicts a continuing harm." *3570 East Foothill Blvd., Inc. v. City of Pasadena*, 912 F. Supp. 1268, 1278 (C.D. Cal. 1996). Plaintiffs' challenge to the City's Sign Ordinance is therefore not barred by the statute of limitations.

2. Exhaustion of Administrative Remedies

Defendant argues that Plaintiffs' FAC should be dismissed because Plaintiffs have failed to exhaust their administrative remedies pursuant to LAMC § 98.0403.1. Plaintiffs are not required, however, to exhaust administrative remedies since they are challenging the Sign Ordinance as facially invalid. *See Nat'l Advertising Co. v. Town of Babylon*, 900 F.2d 551, 555 (2nd Cir. 1990); *see also Shuttlesworth*, 394 U.S. at 151 ("'The Constitution can hardly be thought to deny to one subjected to the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to its demands.'") (citations omitted). Additionally, because

Plaintiffs have brought suit pursuant to 42 U.S.C. § 1983, they are not required to exhaust their administrative remedies in state court. *Bd. Of Regents v. Tomanio*, 446 U.S. 478, 491 (1980); *Monroe v. Pape*, 365 U.S. 167, 183 (1961) ("The federal remedy is supplemental to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.").

3. Standing

As previously discussed, Defendant argues Plaintiffs lack standing to challenge the constitutionality of the Sign Ordinance because Plaintiffs' signs are not murals. However, as distinguished from a request for a preliminary injunction, the Court does not reach the merits of a Complaint on a motion to dismiss. Rather, the Court looks only to the contents of the Complaint in the light most favorable to Plaintiffs. *See Potthoff v. Morin*, 245 F.3d 710, 715 (8th Cir. 2001) ("'For purposes of ruling on a motion to dismiss for want of standing ... courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.'") (*citing Warth v. Seldin*, 422 U.S. 490, 501 (1975)).

Plaintiffs have alleged facts sufficient to demonstrate that they have a "personal stake in the outcome of the controversy." *Baker v. Carr*, 369 U.S. 186, 209 (1962). Plaintiffs allege that they have leased several sites within the City's jurisdiction for the placement of large "wall/mural-type painted signs." (FAC, ¶ 17.) Plaintiffs allege that based on the Sign Ordinance, they cannot post their "advertising copy at these sites absent the approval by the Cultural Affairs Commission." (*Id.*) Plaintiffs conclude that "the restrictions now in place by the City have deprived Plaintiff[s] of [their] advertising clientele of their free speech rights." (*Id.* at ¶ 18.) In addition,

Plaintiffs allege that they are in the business of leasing outdoor advertising space for off-premises signs, and the Sign Ordinance impermissibly distinguishes between off-premises and on-premises signs. (FAC, ¶¶ 10, 12.) The Court therefore concludes that Plaintiffs' allegations are sufficient to confer standing to defeat a Motion to Dismiss.

C. Failure to State a Claim

Finally, Defendant argues that Plaintiffs have failed to allege facts sufficient to support their claims for: (1) declaratory relief for violation of Plaintiffs' First Amendment Rights; (2) injunctive relief preventing the City from enforcing the Sign Ordinance; and (3) damages pursuant to 42 U.S.C. § 1983 for the City's violation of Plaintiffs' civil rights.

1. Declaratory Relief

In order to state a claim for declaratory relief, Plaintiffs must allege a "justiciable controversy." *Heimann v. Nat'l Elevator Indus. Pension Fund*, 187 F.3d 493, 510 (5th Cir. 1999). The Complaint must disclose "a legal right, relation, status, or interest claimed by [P]laintiff[s] over which a dispute with the [D]efendant has arisen." 5 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, § 1238 at 287 (2d ed. 1990) (citing *Paper Carriers Union No. 450 v. Pulitzer Pub. Co.*, 309 F.2d 716 (8th Cir. 1962)).

Here, Plaintiffs allege that "an actual and justiciable controversy has arisen and now exists between Plaintiffs and Defendant concerning the constitutionality of the Sign Ordinance." (FAC, ¶ 39.) Plaintiffs contend that the Sign Ordinance "impermissibly discriminates in favor of commercial speech ... over non-commercial speech;" "... constitutes an unlawful prior restraint of speech...;" and "denies Plaintiffs equal protection of the laws ...." (*Id.* at

¶ 40.) Plaintiffs have therefore alleged a "justiciable controversy" sufficient to state a claim for declaratory relief.

2. Injunctive Relief

In their second cause of action, Plaintiffs' seek injunctive relief to restrain the City from enforcing the Sign Ordinance against their signs. To state a claim for injunctive relief, Plaintiffs must demonstrate "the likelihood of substantial and immediate irreparable injury and the inadequacy of remedies at law." *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1495 (9th Cir. 1996). Plaintiffs allege that unless an injunction is issued, "Plaintiffs will be irreparably injured in that they will be deprived of their constitutional rights guaranteed under the Federal and State Constitutions, will suffer substantial loss of rents, profits and goodwill ... and will be subjected to a multiplicity of suits." (FAC, ¶ 47.) The enforcement of the Sign Ordinance will also "have a chilling effect on the exercise of First Amendment rights by members of the public." (*Id.*) As such, Plaintiffs allege they have "no adequate remedy at law to prevent or redress this irreparable injury." (FAC, ¶ 48.) Plaintiffs have therefore sufficiently stated a claim for injunctive relief.

3. Deprivation of Civil Rights, 42 U.S.C. § 1983

To state a claim under § 1983, Plaintiffs must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1998). Plaintiffs allege that Defendant has deprived them of "rights, privileges and immunities secured by the Constitution of the United States, specifically, the right to

freedom of speech, due process and equal protection of the laws as secured by the First, Fifth and Fourteenth Amendments...." (FAC, ¶ 51.) Plaintiffs have allegedly been deprived of "rents, profits and goodwill from the maintenance and lease of the off-premises signs...." (*Id.* at ¶ 53.) Plaintiffs claim that in performing said acts, Defendant has "acted under color of statute, ordinance, regulation and policy of the municipality...." (FAC, ¶ 52.) Plaintiffs have satisfied the pleading requirements for bringing a claim under 42 U.S.C. § 1983.

V. Conclusion

The Court hereby denies Plaintiffs' Motion for Preliminary Injunction. Defendant's Motion to Stay and/or Dismiss Plaintiffs' First Amended Complaint is denied.

/s/ Florence-Marie Cooper
FLORENCE-MARIE COOPER, JUDGE
UNITED STATES DISTRICT COURT

IT IS SO ORDERED.

May 30, 2001

APPENDIX D

LOS ANGELES MUNICIPAL CODE
DIVISION 62 (BUILDING CODE)
SIGNS

SEC. 91.6201. SCOPE AND PURPOSE.

(a) Scope. All exterior signs and sign support structures shall conform to the requirements of this division and all other applicable provisions of this code.

(b) Purpose. The purpose of this division is to promote public safety and welfare by regulating signs in keeping with the following objectives:

1. That the design, construction, installation, repair and maintenance of signs will not interfere with traffic safety or otherwise endanger public safety;

2. That the regulations will provide reasonable protection to the visual environment while providing adequate conditions for meeting sign users' needs;

3. That incompatibility between signs and their surroundings will be reduced;

4. That both the public and sign users will benefit from signs having improved legibility, readability and visibility;

5. That consideration will be given to equalizing the opportunity for messages to be displayed;

6. That adequacy of message opportunity will be available to sign users without dominating the visual appearance of the area.

SEC. 91.6202. ENFORCEMENT.

(a) Violations. It shall be unlawful for any person to erect, construct, install, enlarge, alter, repair, move, remove, convert, demolish, use or maintain any sign or sign support structure or cause or permit the same to be done, in violation of any of the provisions of this division.

Any person who violates any causes or permits another person to violate any of the provisions of this division is guilty of a misdemeanor.

SEC. 91.6203. DEFINITIONS
The following terms whenever used in this division are defined below. To the extent that other terms used in this division are defined in Section 12.03 and Division 2 of Article 1 of Chapter IX of this Code, those definitions shall apply.

BUILDING FRONTAGE. The projection of the building walls upon the street used for street frontage.

FACE OF BUILDING. The general outer surface, not including cornices, bay windows or architectural projections, of any exterior wall of a building.

* * *

INFORMATION SIGN. A sign which is limited to a message giving directions, instructions, menus, selections or address numerals.

* * *

MURAL SIGN. A sign which is applied to and made integral with a wall, the written message of which does not exceed three percent of the total area of the sign, and which has been approved pursuant to Section 91.6217 of this Code.

ON-SITE SIGN. A sign that is other than an off-site sign.

OFF-SITE SIGN. A sign which displays any message directing attention to a business, product, service, profession, commodity, activity, event, person, institution or any other commercial or noncommercial message, which is generally conducted, sold, manufactured, produced, offered or occurs elsewhere than on the premises where such sign is located.

* * *

SIGN. Any display board, wall, screen, object or part thereof, used to announce, declare, demonstrate, display or otherwise present a message and attract the attention of the public.

SIGN AREA. An area circumscribed by the smallest geometric shape created with a maximum of eight straight lines which will enclose all words, letters, figures, symbols, designs and pictures, together with all framing, background material, colored or illuminated areas and attention-attracting devices forming an integral part of an individual message except that:

1. Wall signs having no discernible boundary shall have the areas between the letters, words intended to be read together and any device intended to draw attention to the sign message included in any computation of surface area.

2. For spherical, cylindrical or other three-dimensional signs the area of the sign shall be computed from the smallest two-dimensional geometrical shape or shapes which will best approximate the greatest actual surface area visible from any one direction.

* * *

WALL SIGN. Any sign attached to, painted on or erected against the wall of a building or structure, with the exposed face of the sign in a plane approximately parallel to the plane of the wall.

SEC. 91.6205. GENERAL REQUIREMENTS.

(a) Permit Required. A building permit shall be obtained from the department in accordance with the provisions of Division 2 of Article 1 of Chapter IX of this code for any signs and/or sign alterations, other than changes or replacement of any copy, that are regulated by this division, except those signs specified in Section 91.0102(b) 26 and 27 of this code and temporary signs containing political, ideological or other noncommercial messages. Where signs are illuminated by electric lighting, an electrical permit shall also be obtained as required by Article 3 of Chapter IX of this code.

SEC. 91.6216. MURAL SIGNS.

(a) Approval. Approval for mural signs shall be obtained from the Cultural Affairs Commission. The placement, height, and overall area of a mural sign shall be as approved by the Cultural Affairs Commission. In making its determination the Cultural Affairs Commission shall find that the proposed sign does not conflict with the purposes and objectives set forth in Section 91.6201(b) of this division.

(b) General Requirements. In addition to the requirements of this Section, mural signs must comply with Sections 91.6201 through 91.6205. Mural signs shall not be required to comply with the provisions of Sections 91.6209 and 91.6220 of this Section.

SEC. 91.6220. OFF-SITE SIGNS.

(a) General. Off-site signs shall comply with the requirements of this Section and any applicable provisions of Sections 91.6201 through 91.6205 of this division.

(b) Location.

1. No portion of an off-site sign with a sign area greater than 80 square feet shall be placed within 200 feet of a residentially zoned lot which is located on the same side of the same street as the lot on which the sign is placed. However, where a lot has two or more street frontages, an off-site sign may be located on that street frontage which is not on the same street as the residentially zoned lot; provided, the off-site sign and sign support structure is placed in that half of the lot that is the farthest from the street frontage on which the residentially zoned lot is located.

2. No portion of an off-street sign or sign support structure shall be located in that half of a lot located farthest from the street frontage, when residentially zoned property is located to the rear of that street frontage.

3. Off-site signs are not permitted along that portion of lots having a street frontage of less than 50 feet.

4. No more than four off-site signs shall be located at the intersection of two or more streets when such signs are located within 150 feet of the intersection of two street frontages.

5. An off-site sign face shall not located within 1 feet of an interior lot line.

CITY OF LOS ANGELES – BOARD OF CULTURAL AFFAIRS COMMISSION

APPLICATION FOR APPROVAL OF MURAL PROJECTS

I. LEVEL OF REVIEW

. . .

II. SUBMISSION MATERIALS CHECKLIST
All public art applications must be accompanied by the following forms of support documentation.

A. CONCEPTUAL REVIEW

___ 1. COMPLETED APPLICATION FORM and CHECK for fee amount (see page 1).

___ 2. WRITTEN NARRATIVE (maximum one page) Describe the image and/or design, how it fits within the existing environment and any other pertinent issues including but not limited to: duration of project, dimensions, funding source, surrounding buiing types, materials, commitment to long term maintenance, signage, lighting, collaboration between artist and designer.

___ 3. Description of ANTI-GRAFFITI COATING to be applied to artwork. Contact the Technical Supervisor at Operation Clean Sweep at (213) 847-5909 for assistance.

___ 4. LETTER OF PERMISSION to do public art project from BUILDING/WALL owner.

___ 5. INPUT AND LETTER OF SUPPORT of the project from COMMUNITY group with active membership in project area.

___ 6. INPUT AND COMMENT from the CITY COUNCIL DISTRICT office in project area.

___ 7. LOCATION MAP indicating the area of the City in which the project is located (Thomas Guide).

___ 8. RENDERING and/or WORKING MODEL with dimensions indicated. Colors, scale, materials and details must be indicated and accurate.

___ 9. COLOR PHOTOGRAPHS of the site for which the artwork is intended, adjacent buildings and buildings across the street to clearly represent the neighborhood.

___ 10. ARTIST RESUME and description of past work.

___ 11. INPUT AND DOCUMENTATION DEPARTMENT OF BUILDING AND SAFETY SIGN PRE-INSPECTION, if applicable (as determined by Cultural Affairs Department L.A.M.C. 6205.5-6205.6). Include any zoning or city plan requirements (i.e. ZI files, ZA cases, Q conditions).

___ 12. INPUT AND DOCUMENTATION DEPARTMENT OF TRANSPORTATION, if applicable (as determined by Cultural Affairs Department staff and/or Department of Building and Safety L.A.M.C. 6205.5-6205.6).

B. FINAL REVIEW

___ 1. COMPLETED APPLICATION FORM and CHECK for fee amount.

___ 2. RESUBMIT all items from Conceptual Approval requested from Submission Material Checklist.

___ 3. WRITTEN RESPONSE to any conditions or comments made by Committee/Commission at the Conceptual Review.

. . .

*NOTE: All requested items in Sections A and B, above must be submitted to Cultural Affairs Department staff before an application can be processed and scheduled for a Commission agenda.

MC/Revised 10/99

(2)

No. 01-1704

Supreme Court, U.S.
FILED
JUN 19 2002
OFFICE OF THE CLERK

In The

Supreme Court of the United States

REGENCY OUTDOOR ADVERTISING, INC.,
a California Corporation,

Petitioner,

v.

CITY OF LOS ANGELES,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The "Questions Presented" section of Petitioner's brief grossly mischaracterizes the City's sign regulation scheme.[1] Petitioner would have the Court believe that the City so severely restricts the placement of wall signs that the only way to receive permission to put up a wall sign is to obtain a mural sign permit from the Cultural Affairs Commission.[2]

This characterization is terribly misleading. The truth is that the City's sign ordinance authorizes eleven types of signs in the City[3], with each category being subject to different specific restrictions on factors such as size, density, and location. As an additional category of signs, the City also allows mural signs, which are signs that, among other things, must be "applied to and made integral with the wall."

Wall signs and mural signs are subject to different size restrictions. Under the sign ordinance,[4] banners/temporary signs and wall signs are limited to a maximum size of two

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[1] Petitioner also makes numerous false statements about the City's enforcement of its sign ordinance. Petition at 7.

[2] Petitioner at i.

[3] Illuminated architectural canopy ("canopy") signs (Los Angeles Municipal Code ("LAMC") §91.6211), monument signs (§91.6208), pole signs (§91.6212), information signs (§91.6207), projecting signs (§91.6209), roof signs (§91.6213), wall signs (§91.6210), window signs (§91.6214), marquee signs (§91.6215), mural signs (§91.6217), temporary signs (§91.6216) and offsite signs (§91.6218). *See also* LAMC §91.6201.3. Copies of all of these code sections are included in Appendix A hereto.

[4] LAMC §91.6217 (see Appendix A).

QUESTIONS PRESENTED – Continued

square feet of sign for each foot of lot frontage, plus, as to wall signs on buildings more than one story in height, a ten percent increase for each story, not to exceed fifty percent.[5] By contrast, the mural sign provisions do not place express size limits on mural signs but the "size, location and overall area" of a mural sign is as approved by the Cultural Affairs Commission. Such an approval, however, is not an "exemption" to the wall sign size restrictions because mural signs and wall signs are distinct categories of signs under the City's sign ordinance and the approval of signs in one category has no effect on signs in the other category.

In the present lawsuit, Petitioner's request for a preliminary injunction was denied by the district court and that denial was upheld by the Ninth Circuit. Petitioner now seeks review by this Court of that denial.

The standard of review of a lower court's denial of a preliminary injunction is "abuse of discretion". *Synanon Foundation, Inc. v. California*, 44 U.S. 1307 (1979). Therefore, if this Court is satisfied that the trial court did not "abuse its discretion" in denying the preliminary injunction, this Court should decline to take the matter up on appeal.

To determine if the trial court had a proper basis for denying injunctive relief, this Court should consider a number of factors. If even a single of these factors indicates that injunctive relief is not warranted, this Court

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[5] LAMC §§91.6216.3 and 91.6210.1.

QUESTIONS PRESENTED – Continued

will be justified in denying review. The factors to be considered are:

(1) that the facts of the underlying litigation have not been fully developed and its merits decided by the trial court;

(2) that Petitioner by its own conduct has demonstrated that there is no urgency warranting injunctive relief;

(3) that the City recently enacted a ban on mural signs which moots any need for a preliminary injunction of the City's mural provisions;

(4) that Petitioner does not have standing to pursue a preliminary injunction of the mural provisions because Petitioner's signs are not mural signs that will be affected by those mural provisions;

(5) that Petitioner cannot meet the substantive requirements in support of a preliminary injunction, which are the possibility of irreparable injury to Petitioner if the injunction is not granted and the likelihood that Petitioner will succeed on the merits on the underlying litigation.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
STATEMENT OF JURISDICTION	1
STATUTES INVOLVED	1
STATEMENT OF CASE	1
SUMMARY OF ARGUMENT	3
REASONS WHY THE PETITION SHOULD BE DENIED	4
I. Review of the lower court's denial of a preliminary injunction by this Court would be premature because the facts have not been fully developed and the merits fully heard by the trial court below	4
II. There is no urgency justifying a preliminary injunction	5
III. The request to enjoin enforcement of the mural provisions of the City's sign ordinance is moot in light of the City's recently enacted ban on mural signs	5
IV. Because Petitioner's signs are not mural signs, Petitioner lacks standing to challenge the mural sign provisions of the City's sign ordinance	6
V. Petitioner has not satisfied the requirements for a preliminary injunction	8
A. Standards for the issuance of a preliminary injunction	8
B. Standard of review of denial of a preliminary injunction	8

TABLE OF CONTENTS – Continued

Page

C. Petitioner has not demonstrated irreparable injury 9

D. Petitioner is not likely to prevail on the merits 9

(1) The City's mural sign provisions do not violate the First Amendment because they are content-neutral and impose only reasonable time, place, and manner restrictions 9

(2) The Ninth Circuit's decision to deny Petitioner's request for a preliminary injunction does not conflict with this Court's decision in *Metromedia, Inc. v. San Diego* 11

(3) The mural sign provisions of the sign ordinance do not violate the *Lakewood* and *Desert Outdoor* cases 12

(4) The Cultural Affairs Commission does not have the power to exempt signs from the requirement of a building permit and a traffic safety study and these requirements are not disguised efforts to control speech 15

CONCLUSION 16

TABLE OF AUTHORITIES

Page

CASES

City of Angoon v. Marsh, 749 F.2d 1413 (9th Cir. 1985) 8

City and County of San Francisco v. Eller Outdoor Advertising, 192 Cal.App.3d 643 (1987) 11

Desert Outdoor Advertising, Inc. v. City of Moreno Valley, 103 F.3d 814 (9th Cir. 1996) 12, 13, 14

Doe v. National Board of Medical Examiners, 199 F.3d 146 (9th Cir. 1999) 7

Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167 (2000) 6

Gentala v. City of Tucson, 213 F.3d 1055 (9th Cir. 2000) 8

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251 (1916) 4

Inland Steel Co. v. U.S., 306 U.S. 153 (1939) 9

Lakewood v. Plain Dealer, 486 U.S. 750 (1988) 12, 13, 14

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) 6, 7

Mazurek v. Armstrong, 520 U.S. 968 (1997) 8

Members of City Council v. Taxpayers for Vincent, 466 U.S. 789 (1984) 11, 14

Messer v. City of Douglasville, 975 F.2d 1505 (11th Cir. 1992) 11

Metromedia, Inc. v. San Diego, 453 U.S. 490 (1981) .. 11, 12, 14

NAACP, Inc. v. Town of East Haven, 70 F.3d 219 (2nd Cir. 1995) 8

TABLE OF AUTHORITIES – Continued

Page

National Advertising v. City and County of Denver, 912 F.2d 405 (10th Cir. 1990) 14

North Olmstead Chamber of Commerce v. City of North Olmstead, 86 F. Supp. 2d 755 (N.D. Ohio 2000) 12

Onsite Advertising Services LLC v. City of Seattle, 134 F. Supp. 2d 1210 (N.D. Wa. 2001) 12

Richenberg v. Perry, 73 F.3d 172 (8th Cir. 1995) 8

Synanon Foundation, Inc. v. California, 44 U.S. 1307 (1979) 8

Thomas v. Chicago Park District, 534 U.S. 316 (2002) 10

Walczak v. EPL Prolong, Inc., 198 F.3d 725 (9th Cir. 1999) 9

West Point-Pepperell, Inc. v. Donovan, 689 F.2d 950 (11th Cir. 1982) 8

Young v. City of Simi Valley, 216 F.3d 807 (9th Cir., 2000) 6

STATUTES

Los Angeles Municipal Code §91.6201.2 ..... 10, 12, 13

Los Angeles Municipal Code §91.6201.3 i

Los Angeles Municipal Code §91.6203 2

Los Angeles Municipal Code §91.6205.1 15

Los Angeles Municipal Code §91.6205.2 15

Los Angeles Municipal Code §91.6205.5.2 15

Los Angeles Municipal Code §91.6205.11 6

TABLE OF AUTHORITIES – Continued

Page

Los Angeles Municipal Code §91.6207 i
Los Angeles Municipal Code §91.6208 i
Los Angeles Municipal Code §91.6209 i
Los Angeles Municipal Code §91.6210 i
Los Angeles Municipal Code § 91.6210.1 ii
Los Angeles Municipal Code §91.6211 i
Los Angeles Municipal Code §91.6212 i
Los Angeles Municipal Code §91.6213 i
Los Angeles Municipal Code §91.6214 i
Los Angeles Municipal Code §91.6215 i
Los Angeles Municipal Code §91.6216 i
Los Angeles Municipal Code §91.6216.3 ii
Los Angeles Municipal Code §91.6217 i
Los Angeles Municipal Code §91.6217.1 10
Los Angeles Municipal Code §91.6218 i

STATEMENT OF JURISDICTION

Respondent agrees with Petitioner's Statement of Jurisdiction.

STATUTES INVOLVED

In Appendix D to its petition for writ of certoriari, Respondent reproduces only some of the provisions of the Los Angeles sign ordinance that apply to this litigation. Other provisions of the City's sign ordinance, however, also apply here and for that reason Respondent has attached copies of those additional provisions at Appendix A hereto.

STATEMENT OF CASE

This case involves "Supergraphic" signs, which are very large signs produced by inexpensively machine painting images onto pieces of canvas or vinyl mesh fabric. Here, Petitioner caused numerous Supergraphic signs to be hung from walls and the sides of buildings in the City of Los Angeles for commercial advertising purposes.

After City inspectors became aware of several of these Supergraphic signs, the inspectors issued orders to comply, which stated that these signs did not comply with the City's sign ordinance. In response, Petitioner challenged the constitutionality of the City's sign ordinance. Specifically, Petitioner challenged the mural sign provisions of the sign ordinance and the alleged "unfettered discretion"

of the Cultural Affairs Commission[6] that reviews applications for mural sign permits.

More than five months after Petitioner filed the challenge, Petitioner sought a preliminary injunction to enjoin the City from "hindering or interfering in any way with the operation . . . of the wall/mural signs" at twenty-eight locations. To support a preliminary injunction, it was Petitioner's burden to show, among other things, that Petitioner was likely to prevail on the merits of the underlying constitutional challenge to the City's sign ordinance.

At the trial court hearing on Petitioner's request for a preliminary injunction, a key issue was whether Petitioner's signs even qualified as "mural signs"[7], which would give Petitioner standing to challenge the application of the sign ordinance to mural signs. Despite extensive briefing, however, Petitioner failed to submit any evidence that its signs were mural signs. By contrast, the City submitted overwhelming evidence, including photographs, which showed that each sign and display at the location for which Petitioner sought a preliminary injunction was nothing more than a cloth/vinyl banner (i.e. a "temporary sign" under the sign ordinance), which was not "applied to and made integral with a wall" and where text exceeded three percent.

Although Petitioner had alleged in its complaint that infirmities in the sign ordinance impacted twenty-eight of

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[6] The Cultural Affairs Commission has no involvement with any type of sign other than mural signs.

[7] A mural sign is a sign which is, among other things, "applied to and made integral with a wall" and has less than three percent text. LAMC §91.6203.

Petitioner's sites, by the time of the hearing on the request for preliminary injunction, Petitioner attempted to show that only three of its sites (6122-6 Hollywood Boulevard, 5300 West Santa Monica Boulevard and 1603-27 South San Pedro Street) had mural signs. The City presented a substantial amount of evidence that Petitioner's claims were false and the district court, after careful examination of that evidence, found Petitioner's claims "meritless".

Ultimately, the district court denied Petitioner's request for a preliminary injunction finding that Petitioner lacked standing because Petitioner's signs were not mural signs.

On appeal, the Ninth Circuit found that Petitioner did have standing but nevertheless affirmed the district court's denial of the preliminary injunction on the grounds that Petitioner was not likely to succeed on the merits.

SUMMARY OF ARGUMENT

There are multiple reasons why it would not be appropriate for the Supreme Court to take this matter up on appeal. First, to do so would be premature because numerous factual matters remain in dispute and the merits have yet to be decided below. Second, any urgency that may have previously justified a preliminary injunction has disappeared. Third, enjoining enforcement of the mural provisions of the City's sign ordinance is moot in light of the City's recently enacted ban on new mural signs. Fourth, Petitioner does not have standing to pursue a preliminary injunction of the mural provisions of the City's sign ordinance because those provisions do not affect Petitioner's signs which are not mural signs.

Finally, Petitioner cannot meet the substantive requirements for a preliminary injunction, which are irreparable injury and likelihood of success on the merits. The evidence before the district court was overwhelming that every sign displayed at the location for which Petitioner sought the preliminary injunction was not a "mural sign". Thus, Petitioner will not suffer any injury, let alone irreparable injury, from enforcement of the mural sign provisions. As to likelihood of success on the merits, Petitioner is not likely to prevail on its First Amendment challenge because, as found by the Ninth Circuit, the mural sign provisions of the City's sign ordinance further important governmental interests and are content-neutral.

Therefore, Petitioner's request for a preliminary injunction was properly denied by both the district court and the Ninth Circuit and this Court should deny the petition for writ of certiorari.

REASONS WHY THE PETITION SHOULD BE DENIED

I. Review of the lower court's denial of a preliminary injunction by this Court would be premature because the facts have not been fully developed and the merits fully heard by the trial court below.

It is not proper to issue a writ of certiorari until final judgment has been rendered in a case, except in exceptional circumstances. The lack of finality in the judgment below is by itself sufficient grounds for denying review. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916).

Now that the Ninth Circuit has denied petitioner's request for a preliminary injunction, the facts can be fully developed and a final judgment on the merits rendered by the trial court. Only after such a final judgment, should the issuance of a writ of certiorari even be considered.

II. There is no urgency justifying a preliminary injunction.

There is no urgency warranting interim relief in this case as shown by Petitioner's delay in seeking such relief. Petitioner waited over five months after filing its complaint before it filed its motion for preliminary injunction.[8] Moreover, Petitioner filed two written stipulations to continue the trial date, which resulted in an aggregate delay of eleven months.[9] Agreeing to delay a decision on the merits for that amount of time indicates that there is no urgency justifying a preliminary injunction.

III. The request to enjoin enforcement of the mural provisions of the City's sign ordinance is moot in light of the City's recently enacted ban on mural signs.

The request to enjoin enforcement of the mural provisions of the City's sign ordinance is moot in light of the City's recently enacted ban on all new mural signs.

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[8] The complaint was filed on September 14, 2000, and Petitioner's motion for preliminary injunction was filed on February 8, 2001.

[9] The first stipulation was approved by District Court Judge Florence Cooper in December of 2001 and continued the trial date from April 16, 2002, to September 17, 2002. The second stipulation was approved by Judge Cooper in May of 2002 and continued the trial date from September 17, 2002, to March 18, 2003.

That ban was imposed by the enactment of City Ordinance No. 174517.[10]

IV. Because Petitioner's signs are not mural signs, Petitioner lacks standing to challenge the mural sign provisions of the City's sign ordinance.

To meet the Article III standing requirements of an actual "case" or "controversy", Petitioner must satisfy three elements: 1) Petitioner must have suffered an **injury in fact**; 2) the injury must be fairly **traceable** to the City's challenged conduct; and 3) it must **be likely that the injury will be redressed** by a favorable decision.[11]

In limited circumstances, a plaintiff may challenge an overly broad statute by showing that the statute inhibits the First Amendment rights of parties not before the court. To have standing to bring such a facial challenge, however, a plaintiff must demonstrate that the ordinance "creates an **unacceptable risk of the suppression of ideas**" and that the plaintiff has "**suffered an injury**."[12] In addition, the injury must be "an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

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[10] Ordinance No. 174517 added both "supergraphic signs" and "mural signs" to the list of prohibited types of signs set forth in LAMC §91.6205.11. Copies of Ordinance No. 174517 and LAMC §91.6205.11 are included in Appendix A hereto.

[11] *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180-181 (2000).

[12] *Young v. City of Simi Valley*, 216 F.3d 807, 815 (9th Cir., 2000).

To make this showing, Petitioner was required to produce evidence that its signs have been harmed by the mural sign provisions of the City's sign ordinance.[13] Petitioner failed to meet this burden and the evidence before the district court was overwhelming that every sign displayed at the locations for which Petitioner sought the preliminary injunction was a temporary banner sign and not a "mural sign" under the Sign Ordinance.[14]

By contrast, the City can present extensive evidence showing that all of Petitioner's signs were cloth or vinyl banners that do not meet the criteria for a mural sign, including the requirement that the sign be "applied to and made integral with" the wall of a building.[15]

Because Petitioner's signs are not mural signs that will be affected by the mural sign provisions, Petitioner lacks standing.

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[13] *Lujan*, 504 U.S. at 561; *Doe v. National Board of Medical Examiners*, 199 F.3d 146, 152, 153 (9th Cir. 1999).

[14] Exhibit C to Petition at C9 to C12.

[15] *See* 3/5/01 Dec. of B. Neighbors (Appellants' Record on Appeal before the Ninth Circuit ("ROA") 00574-00588); 2/27/01 Dec. of E. Key (ROA 00615-00620); 2/26/01 Dec. of E. Oddone (ROA 00290-00295, 301-304, 310, 317, 324, 326 and 331); 2/26/01 Dec. of D. Wong (ROA 00340-342, 349-351, 365, 372, 374, 3780; 2/26/01 Dec. of G. Taylor (ROA 00386-391, 397); 2/26/01 Dec. of J. Crawford (ROA 00402-00411).

V. Petitioner has not satisfied the requirements for a preliminary injunction.

A. Standards for the issuance of a preliminary injunction.

To warrant a preliminary injunction, a plaintiff must show either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) serious questions are raised and the balance of hardships tips in plaintiff's favor. *Gentala v. City of Tucson*, 213 F.3d 1055, 1060 (9th Cir. 2000). A strong showing of entitlement establishing both irreparable injury and probability of success on the merits is required to enjoin governmental action.[16]

The burden of persuasion is on the party seeking a preliminary injunction. *West Point-Pepperell, Inc. v. Donovan*, 689 F.2d 950, 956 (11th Cir. 1982). Because a preliminary injunction is an extraordinary remedy, courts require the movant to carry its burden of persuasion by a "clear showing."[17]

B. Standard of review of denial of a preliminary injunction.

Appellate courts ordinarily review the grant or denial of a preliminary injunction only for abuse of discretion. *Synanon Foundation, Inc. v. California*, 44 U.S. 1307 (1979). A court abuses its discretion by basing its decision

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[16] *Richenberg v. Perry*, 73 F.3d 172, 173 (8th Cir. 1995); *NAACP, Inc. v. Town of East Haven*, 70 F.3d 219, 223 (2nd Cir. 1995).

[17] *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997); *City of Angoon v. Marsh*, 749 F.2d 1413, 1415 (9th Cir. 1985).

either on an erroneous legal standard or clearly erroneous factual findings. *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 732 (9th Cir. 1999).

C. Petitioner has not demonstrated irreparable injury.

Petitioner's signs do not qualify as mural signs and for that reason the mural provisions of the City's sign ordinance will not cause any injury to Petitioner's signs, let alone irreparable injury.

In considering any request for a preliminary injunction, the effect on the public interest must also be considered.[18] By putting up its signs without applying for the necessary permits, Petitioner bypassed and violated all governmental controls over the size, type and locations of signs, including criteria for safe construction and other safety-based regulations. This was and is not in the public interest.

D. Petitioner is not likely to prevail on the merits.

(1) The City's mural sign provisions do not violate the First Amendment because they are content-neutral and impose only reasonable time, place, and manner restrictions.

Petitioner argues that the City's mural sign permitting procedures impose a "prior restraint" that violates the

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[18] *Inland Steel Co. v. U.S.*, 306 U.S. 153, 157 (1939).

First Amendment.[19] It does not. A content-neutral permitting procedure does not run afoul of the First Amendment when the procedure satisfies the requirements of this Court's time, place, and manner jurisprudence: (1) the permit scheme is not based on the content of the message, (2) the scheme is narrowly tailored to serve a significant governmental interest, and (3) the scheme leaves open ample alternatives for communication. *Thomas v. Chicago Park District*, 534 U.S. 316 (2002) (ordinance that required permit for public assemblies, parades, and other events did not violate First Amendment because it was a content-neutral time, place, and manner restriction that contained adequate standards to guide official's decision).

All of these concerns are satisfied here. The first factor is met because the City's mural sign permitting procedures do not consider any aspect of the proposed mural sign's contents and are thus entirely content-neutral.[20] The second factor is satisfied because the mural sign provisions further the significant governmental interests of safety and aesthetics[21] without imposing any unnecessary restrictions on sign applicants. The third and final factor is met because ample alternative avenues are available to Petitioner through the sign ordinance which allows twelve separate categories of signs.[22]

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[19] Petition at 17.

[20] Under the mural sign provisions, the Cultural Affairs Commission does not consider the contents of a proposed mural sign but is limited to considering the placement, height, and overall area of the proposed mural sign (LAMC §91.6217.1) in light of six objectives including safety and aesthetics (LAMC §91.6201.2).

[21] LAMC §91.6201.2.

[22] *See* note 3, *supra*.

(2) The Ninth Circuit's decision to deny Petitioner's request for a preliminary injunction does not conflict with this Court's decision in *Metromedia, Inc. v. San Diego.*

Contrary to Petitioner's assertions, the Ninth Circuit's decision to deny Petitioner's request for a preliminary injunction does not conflict with this Court's decision in *Metromedia, Inc. v. San Diego*[23] and justify granting certiorari on that basis. In *Metromedia*, this Court recognized over twenty years ago that aesthetics[24] and traffic safety are substantial governmental goals that can justify a city's absolute ban on commercial offsite outdoor signs.[25] Rather than such a total ban, however, the City of Los Angeles' sign ordinance allows signs but regulates them through permissible time, place and manner restrictions. These types of restrictions certainly comport with this Court's decision in *Metromedia.*

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[23] 453 U.S. 490 (1981).

[24] "It is well settled that the state may legitimately exercise its police powers to advance its aesthetic interests." *Messer v. City of Douglasville*, 975 F.2d 1505, 1510 (11th Cir. 1992), citing *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 805 (1984)."

[25] "If the city has a sufficient basis for believing that billboards are traffic hazards and are unattractive, then obviously the most direct and perhaps the only effective approach to solving the problems they create is to prohibit them." *Metromedia, Inc*, 453 U.S. at 507-508. *See also Taxpayers for Vincent*, 466 U.S. at 807; *City and County of San Francisco v. Eller Outdoor Advertising*, 192 Cal.App.3d 643 (1987)."Despite the emergence of three distinct schools of thought in Metromedia, however, a clear majority-seven of the nine justices-expressly concluded that the city's substantial and weighty interests in minimizing unpleasant formats for expression and promoting safety and aesthetics justified an absolute ban on all commercial offsite outdoor signs." *Id.* at 658.

Along these same lines, Petitioner's reliance on *North Olmstead Chamber of Commerce v. City of North Olmstead*, 86 F. Supp. 2d 755, 767 (N.D. Ohio 2000) is misplaced because *North Olmstead* is an aberrational district court decision that has been criticized for not following *Metromedia. Onsite Advertising Services LLC v. City of Seattle*, 134 F. Supp. 2d 1210, 1214 (N.D. Wa. 2001).

(3) The mural sign provisions of the sign ordinance do not violate the *Lakewood* and *Desert Outdoor* cases.

Petitioner relies upon *Lakewood v. Plain Dealer*[26] and *Desert Outdoor Advertising, Inc. v. City of Moreno Valley*[27] for the proposition that the sign ordinance provisions on their face are unconstitutional. This reliance is misplaced. The Cultural Affair Commission's role with respect to mural signs is limited to approving their "placement, height and overall area" in light of the purposes and objectives set forth in LAMC 91.6201.2.[28] (LAMC §91.6217.1).

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[26] 486 U.S. 750, 769, 772 (1988).

[27] 103 F.3d 814 (9th Cir. 1996).

[28] LAMC §91.6201.2 specifies six objectives: 1. That the design, construction, installation, repair and maintenance of signs will not interfere with traffic safety or otherwise endanger public safety;

2. That the regulations will provide reasonable protection to the visual environment while providing adequate condition for meeting sign users' needs;

3. That incompatibility between signs and their surroundings will be reduced;

(Continued on following page)

Lakewood v. Plain Dealer did not involve signs, but instead an annual licensing scheme for newspapers, where granting the license was left to the discretion of the Mayor and the Court simply found the total absence of any "explicit limits" on discretion to be unconstitutional.[29] The City's mural sign provisions meet the *Lakewood* requirements because under the mural sign provisions the City's discretion is expressly limited to consideration of the "placement, height and overall area" of a proposed mural in light of the six objectives set forth in LAMC §91.6201.2.

Similarly, *Desert Outdoor* does not constitute authority that the Sign Ordinance vests "unfettered discretion." The "purposes and objectives" set forth in §91.6201.2 are specific and concrete factors that relate to the physical characteristics of signs as opposed to the vague "welfare of the general public" ordinance disapproved in *Desert Outdoor*.[30]

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4. That both the public and sign users will benefit from signs having improved legibility, readability and visibility;

5. That consideration will be given to equalizing the opportunity for messages to be displayed;

6. That adequacy of message opportunity will be available to sign users without dominating the visual appearance of the area."

[29] "It is apparent that the face of ordinance contains *no explicit limits on the Mayor's discretion*. Indeed, nothing in the law as written requires the mayor to do more than make the statement 'it is not the public interest' when denying a permit application. . . . We hold those provisions of the Lakewood ordinance giving the mayor unfettered discretion to deny a permit application and unbounded authority to condition the permit on any additional terms he deems 'necessary and reasonable' to be unconstitutional." *Lakewood v. Plain Dealer*, 486 U.S. 750 (1988) (emphasis added).

[30] " . . . City officials have discretion to deny a permit on the basis of ambiguous and subjective reasons. For example . . . will not have a

(Continued on following page)

Furthermore, neither *Lakewood* nor *Desert Outdoor* addressed the validity of ordinances whose goal is aesthetics, improving the quality of urban life, attracting tourists, protecting the visual environment, or improving the quality of life. Even though some of these interests may be somewhat subjective in nature and thus cannot be governed by purely objective criteria, this does not render an ordinance based on these interests unconstitutional[31] as all of these interests are legitimate and substantial governmental interests which must be afforded great weight and respect.[32]

The City's sign ordinance provides for objective criteria which guide both the Cultural Affairs Commission and any reviewing court. The mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge. *See Taxpayers for Vincent*, 466 U.S. at 800 (1984).

Accordingly, Petitioner's facial challenge of the City's sign ordinance and its mural sign provisions fails.

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harmful effect upon the health or welfare of the general public and will not be detrimental to the welfare of the general public and will not be detrimental to the aesthetic quality of the community or the surrounding land uses." *Desert Outdoor Advertising, Inc. v. City of Moreno Valley*, 103 F.3d 814, 818 (9th Cir. 1996).

[31] *See, e.g., National Advertising v. City and County of Denver*, 912 F.2d 405, 410-411 (10th Cir. 1990).

[32] *Metromedia, Inc.*, 453 U.S. at 509-510 (1980).

(4) The Cultural Affairs Commission does not have the power to exempt signs from the requirement of a building permit and a traffic safety study and these requirements are not disguised efforts to control speech.

Petitioner argues that the Cultural Affairs Commission has the power to exempt mural sign permit applicants from the requirements of a building permit and a Department of Transportation traffic hazard determination, with the implication being that the Commission will not exempt signs whose contents the Commission disfavors. This is not true. The express terms of the sign ordinance make a building permit and a traffic safety determination mandatory for all signs, including mural signs.[33]

In support of its contention, Petitioner insinuates that the Cultural Affairs Commission used traffic concerns as a pretext for censoring the Maria Callas sign for 1100 Wilshire in 1998.[34] Petitioner fails to mention that this sign was, in fact, determined by the Department of Transportation to constitute a traffic hazard[35] and the sign permit request was withdrawn, not rejected.[36]

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[33] *See* LAMC §§91.6205.1, 91.6205.2 and 91.6205.5.2 (see Appendix A).

[34] Petition at 23.

[35] " . . . DOT recommended denial of the sign permit . . . " Minutes of July 21, 1998 Meeting of Cultural Affairs Commission, p. 3. *See* Exhibit 6 to the 2/26/01 declarations of J. Smoke and M. Johnstone. (City's ROA 00000229 and 00000238.)

[36] " . . . Mr. Elmore withdrew the project. . . . " *See* 2/26/01 Dec. of J. Smoke, Exh. 7 (City's ROA 00000232) and 2/26/01 Dec. of M. Johnstone, Exh. 6 (City's ROA 00000240).

Petitioner's repeated assertions[37] that the City has denied mural sign applications based on disagreement with the message is simply not supported by the record. Petitioner's own evidence indicates the contrary.[38]

CONCLUSION

For the foregoing reasons, Petitioner's petition should be denied.

Dated: June 19, 2002

Respectfully submitted,

ROCKARD J. DELGADILLO,
City Attorney
KENNETH T. FONG,
Deputy City Attorney
Counsel for Respondent

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[37] Petition at 21.

[38] Petitioner's Exhibits in Support of Motion for Preliminary Injunction, Exhibit M, Cultural Affairs Committee Minutes of July 5, 1995, p. 5: "[Assistant City Attorney] Mr. Brown reiterated that the *Commission is restricted again by the Code not to consider the content or message of the mural signs* . . . Mr. Brown stated that they have to *follow the Code, which provides that they do not consider the content or the message of the mural*. Things that can be considered are the placement, overall area, color, height of the sign, the arrangement, etc. . . . " (emphasis added) (ROA 00144.)

APPENDIX A

ORDINANCE NO. 174517

An ordinance amending Sections 91.6203 and 91.6205.11 of the Los Angeles Municipal Code relating to signs.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 91.6203 of the Los Angeles Municipal Code is amended by adding a new definition for the term "Supergraphic Sign" in alphabetical order to read:

> **SUPERGRAPHIC SIGN.** A sign, consisting of an image projected onto a wall or printed on vinyl, mesh or other material with or without written text, supported and attached to a wall by an adhesive and/or by using stranded cable and eye-bolts and/or other materials or methods, and which does not comply with the provisions in the Los Angeles Municipal Code Section 91.6201 *et seq.*, relating to Wall Signs, Mural Signs, Off-Site Signs and/or Temporary Signs.

Sec. 2. Section 91.6205.11 of the Los Angeles Municipal Code is amended by adding a new Subsection 9 to read:

> **9.** Are supergraphic signs, except when supergraphic signs are specifically permitted pursuant to a legally adopted specific plan, supplemental use district or an approved development agreement.

Sec. 3. Section 91.6205.11 of the Los Angeles Municipal Code is amended by adding a new Subsection 10 to read:

> **10.** Are mural signs, except when mural signs are specifically permitted pursuant to a legally adopted specific plan, supplemental use district or an approved development agreement.

Sec. 4. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located in the Main Street lobby to the City Hall; one copy on the bulletin board located at the ground level at the Los Angeles Street entrance to the Los Angeles Police Department; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of APR 17 2002.

J. MICHAEL CAREY,
City Clerk

By /s/ Conrad Carter
Deputy

Approved APR 19 2002

/s/ James K. Hahn
Mayor

Approved as to Form
and Legality

MAR 29 2002
ROCKARD J. DELGADILLO,
City Attorney

By /s/ Sharon Siedorf Cardenas
SHARON SIEDORF
CARDENAS
Assistant City Attorney

File No. C.F. 98-1474
CPC 2002-432 CA

Pursuant to Charter Section 559, **I approve** this ordinance and recommend its adoption on behalf of the City Planning Commission. . . .

March 28, 2002

see attached report.

/s/ Con Howe
CON HOWE
Director of Planning

DIVISION 62
(Division Amended by Ord. No. 171, 175, Eff. 7/25/96.)

SIGNS

SEC. 91.6201. SCOPE AND PURPOSE.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6201.1. Scope. All exterior signs and sign support structures shall conform to the requirements of this division and all other applicable provisions of this Code, except that the provisions of Sections 91.6205.1, 91.6205.5, 91.6205.6, 91.6205.13, 91.6205.15, 91.6205.16, 91.6206, 91.6212 and 91.6218 shall not apply to the relocation of signs or signs support structures existing on January 17, 1993 that are erected or maintained by the Los Angeles Memorial Coliseum Commission on property owned or controlled, in whole or in part by said Commission.

91.6201.2. Purpose. The purpose of this division is to promote public safety and welfare by regulating signs in keeping with the following objectives:

1. That the designs, construction, installation, repair and maintenance of signs will not interfere with traffic safety or otherwise endanger public safety;

2. That the regulations will provide reasonable protection to the visual environment while providing adequate conditions for meeting sign users' needs;

3. That incompatibility between signs and their surroundings will be reduced;

4. That both the public and sign users will benefit from signs having improved legibility, readability and visibility;

5. That consideration will be given to equalizing the opportunity for messages to be displayed;

6. That adequacy of message opportunity will be available to sign users without dominating the visual appearance of the area.

91.6201.3. Application. On-site signs shall comply with the applicable provisions of Sections 91.6201 through 91.6215. Off-site signs shall comply with the applicable provisions of Sections 91.6201 through 91.6205 and 91.6218. Temporary on-site and off-site signs shall comply with the applicable provisions of Sections 91.6201 through 91.6205 and 91.6216. Mural signs shall comply with the applicable provisions of Sections 91.6201 through 91.6205 and 91.6217.

91.6201.4. Ideological and Political Signs. No provision of this division shall prohibit an ideological, political or other noncommercial message on a sign otherwise permitted by this division.

SEC. 91.6202. ENFORCEMENT.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6202.1. Violations. It shall be unlawful for any person to erect, construct, install, enlarge, alter, repair, move, remove, convert, demolish, use or maintain any sign or sign support structure or cause or permit the same to be done, in violation of any of the provisions of this division.

Any person who violates or causes or permits another person to violate any of the provisions of this division is guilty of a misdemeanor.

91.6202.2. Penalties. Any person convicted of a misdemeanor under the provisions of this division shall be punishable by a fine of not more than $1,000.00 or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment. Each violation of the provisions of this division and each day during which such violation is committed or continues is a separate offense.

Any person convicted of violating any provision of this division may be required to pay restitution to the City of Los Angeles for all costs expended to investigate and/or enforce the provisions of this division.

SEC. 91.6203. DEFINITIONS.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

The following terms whenever used in this division are defined below. To the extent that other terms used in this division are defined in Section 12.03 and Division 2 of article 1 of Chapter IX of this Code, those definitions shall apply.

BUILDING FRONTAGE. The projection of the building walls upon the street used for street frontage.

FACE OF BUILDING. The general outer surface, not including cornices, bay windows or architectural projections, of any exterior wall of a building.

FREEWAY. A highway in respect to which the owners or those in possession of abutting lands have no right to easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access, and which is declared to be such, in compliance with the Streets and Highways Code of the State of California.

IDENTIFICATION SIGN. A wall sign which is limited to a company logo, generic type of business or the name of a business or building.

ILLUMINATED ARCHITECTURAL CANOPY SIGN. An enclosed illuminated structure that is attached to the wall of a building with the face of the sign approximately parallel to the wall and with the message integrated into its surface.

INFORMATION SIGN. A sign which is limited to a message giving directions, instructions, menus, selections or address numerals.

MAIN TRAVELED ROADWAY OF A FREEWAY. That portion of a freeway, including interchange roadways connecting one freeway with another, which is designed for the movement of large volumes of vehicular traffic, efficiently and safely at high speed, but not including service roadways, landscape areas, or ingress or egress ramps connecting the freeway with other streets.

MONUMENT SIGN. (Amended by Ord. No. 172, 121, Eff. 8/30/98.) A sign that is erected directly upon the existing or artificially created grade, or that is raised no more than 12 inches from the existing or artificially created grade to the bottom of the sign, and which has a horizontal dimension equal to or greater than its vertical dimension.

MURAL SIGN. A sign which is applied to and made integral with a wall, the written message of which does not exceed three percent of the total area of the sign, and which has been approved pursuant to Section 91.6217 of this Code.

OFF-SITE SIGN. A sign which displays any message directing attention to a business, product, service, profession, commodity, activity, event, person, institution or any other commercial or noncommercial message, which is generally conducted, sold, manufactured, produced, offered or occurs elsewhere than on the premises where such sign is located.

ON-SITE SIGN. (Amended by Ord. No. 172,121, Eff. 8/30/98.) A sign which displays any message directing attention to a business, product, service, profession, commodity, activity, event, person, institution or any other commercial or noncommercial message, which is generally conducted, sold, manufactured, produced, offered or occurs elsewhere than on the premises where such sign is located.

ON-SITE SIGN. A sign that is other than an off-site sign.

POLE SIGN. (Amended by Ord. No. 172,121, Eff. 8/30/98.) A freestanding sign that is erected or affixed to one or more poles or posts and which exceeds a height of 12 inches as measured from the existing or artificially created grade to the bottom of the sign.

PROJECTING SIGN. A sign, other than a wall sign, that is attached to a building and projects outward therefrom with one or more sign faces approximately perpendicular to the face of the building.

PROJECTION. The distance by which a sign extends beyond the building line.

ROOF SIGN. A sign erected upon a roof of a building.

SIGN. Any display board, wall, screen, object or part thereof, used to announce, declare, demonstrate, display or otherwise present a message and attract the attention of the public.

SIGN AREA. An area circumscribed by the smallest geometric shape created with a maximum of eight straight liens which will enclose all words, letters, figures, symbols, designs and pictures, together with all framing, background material, colored or illuminated areas and attention-attracting devices forming an integral part of an individual message except that:

1. Wall signs having no discernible boundary shall have the areas between letters, words intended to be read together and any device intended to draw attention to the sign message included in any computation of surface area.

2. For spherical, cylindrical or other three-dimensional signs the area of the sign shall be computed from the smallest two-dimensional geometrical shape or shapes which will best approximate the greatest actual surface area visible from any one direction.

3. Sign support structures are excluded if neutral in color.

4. **"Time and Temperature"** sign copy is excluded from computation of sign area if such copy is less than 56 square feet in area.

SIGN FACE. The surface upon which the sign message is placed.

STREET FRONTAGE. The length of a line separating lot from one street.

TEMPORARY SIGN. Any sign that is to be maintained for a limited duration, not to exceed 60 days, including paper signs and other signs that are not permanently affixed to the ground or building.

WALL SIGN. Any sign attached to, painted on or erected against the wall of a building or structure, with the exposed face of the sign in a plan approximately parallel to the plane of the wall.

SEC. 91.6205. GENERAL REQUIREMENTS. (Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6205.1. Permit Required. (Amended by Ord. No. 172,703, Eff. 8/16/99.) A building permit shall be obtained from the Department in accordance with the provisions of Section 91.106 for any sign and/or sign alteration, other than changes or replacement of copy, that are regulated by this division, except those signs specified in Items 18 and 19 of Section 91.101.5 of this Code and temporary signs containing political, ideological or other noncommercial messages. Where signs are illuminated by electric lighting, an electrical permit shall also be obtained as required by Article 3 of Chapter IX of the Los Angeles Municipal Code.

The Department may evoke any sign permit as provided in Section 98.0602 of the Los Angeles Municipal Code.

91.6205.2. Plans. Plans and specifications shall be submitted with the application for permit for each sign. The

Department may require data to be submitted to show that the supporting surface and other members of an existing building to which a sign is to be attached are in good condition, and are adequate to support the load.

Plans shall show complete details, method of attachment or support, location and materials to be used. Plans for signs and sign support structures shall be accompanied by structural plans and computations.

EXCEPTION:

Structural plans and computations will not be required for wall signs painted on the wall, for wall signs less than 100 square feet in area, or for projecting signs less than 20 square feet in area.

91.6205.3. Design and Construction. (Amended by Ord. No. 172,592, Eff. 6/28/99, Oper. 7/1/99.) Sign frames and sign support structures shall be designed and constructed in conformity with other applicable provisions of this Code, and in addition, shall comply with the following:

1. Each sign and sign support structure shall be designed to resist the wind pressure as required by C.B.C. Section 1615.

2. Structural steel members shall be not less than ¼-inch thick if ungalvanized, and 3/16-inch thick if such members, including connecting bolts and fastenings, are galvanized or otherwise treated with approved weatherproofing. Bolts used to support signs equal to or greater than 100 square feet in area shall not be less than ½-inch in diameter. Bolts supporting signs less than 100 square feet in area shall not be less than ⅜ inch in diameter.

Signs erected on buildings or structures shall be securely attached by means of adequate metal brackets, expansion bolts, through bolts, or lag screws. No materials, fabrication, or equipment shall be used which may become dangerous because of vibration, corrosion, disintegration, or any other reason. Wire, other than stranded cable, shall not be used.

If supports of an existing structure are found to be inadequate, they shall be adequately strengthened before the sign is erected.

91.6205.4. Materials. Signs and sign support structures may be constructed of any material allowed in this division for the classification of the sign to be installed. Any materials used shall be of the same quality and grade as those specified in this Code for use in buildings. In addition, any glass material used in signs shall comply with the limits set forth in Table No. 62-A.

91.6205.5. Hazard to Traffic.

91.6205.5.1. Prohibition. No sign or sign support structure shall be erected, constructed, painted or maintained, and no permit shall be issued, if such sign or sign support structure, because of its location, size, nature or type, constitutes a hazard to the safe and efficient operation of vehicles upon a street or a freeway, or which creates a condition which endangers the safety of persons or property thereon.

91.6205.5.2. Hazard Referral. The Department of Building and Safety shall refer the following to the Department of Transportation for hazard evaluation and determination prior to the issuance of a building permit:

1. All permit applications for signs that will be visible from and are located within 500 feet of the main traveled roadway of a freeway;

2. All other permit applications and any signs that are determined by the Department of Building and Safety to have a potential for hazard.

91.6205.5.3. Hazard Determination. The Department of Transportation shall return to the Department of Building and Safety each application so referred to it together with a statement of its determination. If the Department of Transportation determines that the sign or sign support structure will constitute a hazard, the Department of building and Safety shall deny the application for permit.

91.6205.10. Prohibited Locations.

1. No sign or sign support structure shall project into any public alley, except that a sign or sign support structure above a height of 14 feet may project no more than six inches into a public alley.

2. No sign or sign support structure shall be erected in such a manner that any portion of its surface or support structure will interfere in any way with the free use of any fire escape, exit or standpipe, or obstruct any required ventilator, door or stairway. No signs or sign support structure shall obstruct any window to such an extent that any light or ventilation is reduced to a point below that required by law.

3. No sign or sign support structure shall be located less than six feet horizontally or 12 feet vertically from overhead electrical conductors which are energized in excess of 750 volts. The term "overhead electrical conductors" as used herein shall mean any electrical conductor, either bare or insulted, installed

above ground, except such conductors as are enclosed in iron pipe or other material covering of equal strength. Arcs of six foot radius may be used to define corners of prohibition area.

4. No sign or sign support structure shall be erected in a visibility triangle as defined by Sections 12.21-C 7 and 62.200 of the Los Angeles Municipal Code.

5. No sign or sign support structure shall be located within two feet of the curb or edge of any roadway.

91.6205.11. Prohibited Signs. Signs are prohibited if they:

1. Contain obscene matters, as defined in Section 311 of the Penal Code of the State of California.

2. Contain or consist of posters, pennants, banners, ribbons, streamers or spinners, except as permitted in Section 91.6216 of this Code.

3. Contain flashing, mechanical and strobe lights in conflict with the provisions of Section 80.08.4 and 93.0607 of the Los Angeles Municipal Code.

4. Are revolving and where all or any portion rotate at greater than six revolutions per minute.

5. Are tacked, pasted or otherwise temporarily affixed on the walls of building, barns, sheds, trees, poles, posts or fences, except as permitted in Section 91.6216 of this Code.

91.6206.4.3. Alterations, repairs or rehabilitation of existing sign and/or sign support structures that exceed 50 percent of the replacement cost of both the sign and sign

support structure shall comply with all the requirements of the current Code.

91.6206.5. Additions. Existing signs and/or sign support structures with additions or alterations that increase the sign area or height or which change the location or orientation of the sign shall comply with all of the requirements of the current Code.

SEC. 91.6207. INFORMATION SIGNS.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6207.1. Area. Information signs shall not exceed 25 square feet in area.

91.6207.2. Height. Information signs shall be limited to a maximum overall height of six feet six inches above the sidewalk grade or edge of roadway grade nearest the sign.

91.6207.3. Construction. Information signs and sign support structures shall be constructed of noncombustible materials or approved plastics.

SEC. 91.6208. MONUMENT SIGNS.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6208.1. Area.

1. The sign area of monument signs shall not exceed 1.5 square feet per foot of street frontage nor a maximum of 75 square feet for the sign face visible to the same direction of traffic.

2. The combined sign area of monument signs, projecting signs, wall signs, illuminated architectural canopy signs, pole signs, roof signs and window signs

shall not exceed four square feet for each foot of street frontage.

91.6208.2. Location.

1. Monument signs shall be located at least 7.5 feet from interior lot lines and at least 15 feet from any other monument sign, projecting sign or pole sign.

2. The location of monument signs shall not interfere or present a hazard to pedestrian or vehicular traffic.

91.6208.3. Height. The height to the top of the sign shall be limited to a maximum of eight feet above sidewalk grade or edge of roadway grade nearest the sign.

91.6208.4. Shape. Monument signs shall have a horizontal dimension equal to or greater than their vertical dimension.

91.6208.5. Projection. Monument signs shall not project over the roof of a building or over the building line.

91.6208.6. Construction. A monument sign and sign support structure shall be constructed of noncombustible materials or approved plastics.

SEC. 91.6209. PROJECTING SIGNS.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6209.1. Permitted. Projecting signs shall not be permitted on that portion of a lot having less than 50 feet of street frontage. Lots having a street frontage of at least 50 feet may have a projecting sign for each 200 feet or fraction thereof of street frontage, if such frontage does not contain an existing projecting sign or a pole sign.

91.6209.2. Area.

1. The sign area of projecting signs visible to the same direction of traffic shall not exceed 25 square feet plus 1.5 square feet for each foot of street frontage up to a maximum sign area of 300 square feet. Any projecting sign located at the street corner of a corner lot may use the greater street frontage in computing area limitations.

2. The combined sign area of projecting signs, wall signs, monument signs, illuminated architectural canopy signs, pole signs, roof signs and window signs shall not exceed four square feet for each foot of street frontage.

91.6209.3. Location.

1. A projecting sign shall be located at least 7.5 feet from any interior lot line.

2. A projecting sign shall be located at least 15 feet from any other projecting sign, monument sign or pole sign.

3. The plane of the sign face of a projecting sign shall be within 15 degrees of being perpendicular to the face of the building, except at the corner of the building.

91.6209.4. Height. A projecting sign shall not be located lower than eight feet above sidewalk grade or edge of roadway grade nearest the sign and shall not extend above the top of the wall.

91.6209.5. Projections. A projecting sign may project over the building line, but shall not extend beyond the limits shown in Diagram 62-B of this Code. Sign projections shall fall within an area that is perpendicular to the building line and has a width of three feet as measured

parallel with the building line. In no event may a projecting sign project more than eight feet from the face of a building.

EXCEPTION:

For projecting signs located above a 16-foot height and on a lot having a street frontage greater than 50 feet, projections over the building line may vary linearly from five feet at 50 feet to eight feet at 100 feet of street frontage.

91.6209.6. Construction. A projecting sign and sign support structure shall be constructed of noncombustible material or approved plastic.

SEC. 91.6210. WALL SIGNS.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6210.1. Area.

1. The total sign area of wall signs facing a street shall not exceed two square feet for each foot of street frontage, plus one square foot for each foot of building frontage for a single-story building.

2. For buildings more than one story in height, the combined wall sign area shall not exceed that permitted for a single story by more than 10 percent for each additional story. In no event shall the combined wall sign area exceed by 50 percent that area permitted for a single-story building.

3. For wall signs that are made up of individual letters that use the wall of the building as background, the allowable sign area may be increased by 20 percent, provided there is no change in color between the background and the surrounding wall area.

4. The combined sign area of illuminated architectural canopy signs, roof signs and wall signs facing the same direction shall not exceed two square feet for each foot of street frontage, plus one square foot for each foot of building frontage.

5. The combined sign area of wall signs, projecting signs, monument signs, illuminated architectural canopy signs, pole signs, roof signs and window signs shall not exceed four square feet for each foot of street frontage.

SEC. 91.6211. ILLUMINATED ARCHITECTURAL CANOPY SIGNS.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6211.1. Area.

1. The area of illuminated architectural canopy signs shall not exceed two square feet for each foot of street frontage, plus one square foot for each foot of building frontage.

2. In applying sign area limits, only the area occupied by the message of the illuminated architectural canopy signs will be used.

3. The combined sign area of illuminated architectural canopy signs, roof signs and wall signs facing the same direction shall not exceed two square feet for each foot of street frontage, plus one square foot for each foot of building frontage.

4. The combined sign area of illuminated architectural canopy signs, projecting signs, monument signs, wall signs, pole signs, roof signs and window signs shall not exceed four square feet for each foot of street frontage.

91.6211.2. Projections. Illuminated architectural canopy signs may project over a building line. However, in no event may an illuminated architectural canopy sign project more than three feet from the face of the building.

91.6211.3. Construction. The supporting frame of an illuminated architectural canopy sign shall be constructed of noncombustible materials. The canopy surface, including the enclosing soffit, shall be of an approved light-transmitting material. The fabric shall be tested and classified as nonflammable under the provisions of Los Angeles Fire Department Standard No. 43 as referenced in Section 57.07.01 of the Los Angeles Municipal Code.

91.6211.4. Clearance. Illuminated architectural canopy signs shall have a minimum clearance of eight feet above the sidewalk grade or edge of roadway grade nearest the sign and shall not be located closer than two feet from the curb of any roadway.

91.6211.5. Emergency Personnel Access. Illuminated architectural canopy signs shall not occupy a four-foot distance along the exterior wall at one corner of the building's street frontage and an additional four-foot distance along every 50 feet of such frontage.

91.6211.6. Illumination. The sign shall be internally illuminated so as to illuminate the canopy and the exterior wall below. The illuminated architectural canopy sign shall bear the electric sign label of an approved testing agency with a reinspection service.

91.6211.7. Height. an illuminated architectural canopy sign shall not extend above the top of the wall of a building.

91.6211.8. Parking Lots. Where a parking lot exists between an illuminated architectural canopy sign and the street, and there is a wall between the parking lot and the street, a portion of the total sign area permitted by this section may be used on the wall located between the parking lot and the street so long as the sign does not project beyond the lot line. In such case, the sign shall be restricted to that portion of the wall between two feet six inches and three feet six inches in height above the finished grade at the base of the wall generally facing the street.

SEC. 91.6212. POLE SIGNS.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6212.1. Permitted. Pole signs shall not be permitted on that portion of a lot having less than 50 feet of street frontage. Lots having a street frontage of at least 50 feet may have a pole sign for each 200 feet or fraction thereof of street frontage, if such frontage does not contain an existing pole sign or projecting sign.

91.6212.2. Area.

1. Sign area visible to the same direction of traffic shall not exceed two square feet for each foot of street frontage, plus one square foot for each foot of building frontage.

2. The maximum area of any one pole sign shall not exceed 400 square feet.

3. Any pole sign that is located at the street corner of a corner lot may use the greater street frontage for area limitations.

4. The combined sign area of pole signs, projecting signs, monument signs, illuminated architectural canopy signs, wall signs, roof signs and window signs shall not exceed four square feet for each foot of street frontage.

91.6212.3. Location.

1. Pole signs shall be located at least 10 feet from interior lot lines; however, on corner lots and flag lots pole signs may be located five feet from interior lot lines.

2. A pole sign shall be located at least 15 feet from any other pole sign, projecting sign or monument sign.

3. Pole signs shall be located so as not to interfere or present a hazard to pedestrian or vehicular traffic.

4. Where the lower part of a pole sign is less than eight feet above sidewalk grade or the edge of roadway grade nearest the sign, the sign shall extend to grade or shall be installed in a planter that extends beyond the edges of the sign and sign support structure and that is a minimum of 18 inches in height.

91.6212.4. Height. Height shall be measured from the nearest sidewalk or edge of roadway grade to the top of the sign. The overall height limitation shall be determined by street frontage as follows:

1. 25 feet for lots having 50 feet of street frontage;

2. 35 feet for lots having more than 50 feet and less than 100 feet of street frontage; and

3. 42 feet for lots having at least 100 feet of street frontage.

Any pole sign that is located at the street corner of a corner lot may use the greater street frontage for determining height limitations.

In no event shall sign exceed the height specified for the height district in which the sign is located.

91.6212.5. Projections. A pole sign may project over a building line, but shall not extend beyond the limits shown in Diagram 62-B of this Code. Sign projections shall fall within an area that is perpendicular to the building line and has a width of three feet as measured parallel to the building line.

91.6212.6. Construction. Pole signs and sign support structures shall be constructed of noncombustible materials or approved plastics. A maximum of two poles shall be permitted for any pole sign. The maximum cross-sectional dimension of a pole shall not exceed 10 percent of the overall height of the sign.

SEC. 91.6213. ROOF SIGNS.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6213.1. Permitted. Roof signs shall be permitted only when placed directly upon a roof that slopes downward toward and extends to or over the top of an exterior wall.

91.6213.2. Area.

1. Sign area shall not exceed two square feet for each foot of street frontage, plus one square foot for each foot of building frontage.

2. The maximum area of any one roof sign shall not exceed 300 square feet.

3. The combined area of roof signs, illuminated architectural canopy signs and wall signs facing the same direction shall not exceed two square feet for each foot of street frontage, plus one square foot for each foot of building frontage.

4. The combined sign area of wall signs, projecting signs, monument signs, illuminated architectural canopy signs, pole signs, roof signs and window signs shall not exceed four square feet for each foot of street frontage.

91.6213.3. Location.

1. Roof signs shall be located at least 10 feet from interior lot lines.

2. Roof signs shall be located at least two feet from the edge of the roof.

3. The plane of the sign face of a roof sign shall be approximately parallel to the face of the building.

91.6213.4. Height. The top of the roof sign shall be located at least two feet below the ridge of the roof.

91.6213.5. Construction. A roof sign and sign support structure shall be constructed of noncombustible materials or approved plastics.

SEC. 91.6214. WINDOW SIGNS.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6214.1. Area. The total area of all window signs shall not exceed 10 percent of the area of the window.

91.6214.2. Combined Area. The combined sign area of wall signs, projecting signs, monument signs, illuminated architectural canopy signs, pole signs, roof signs and

window signs shall not exceed four square feet for each foot of street frontage.

SEC. 91.6215. MARQUEE SIGNS.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6215.1. Approval. Sign approval shall be obtained from the Cultural Affairs Commission.

91.6215.2. General Requirements. Marquee signs shall comply with the requirements set forth in Sections 91.3205 and 91.6201 through 91.6205 of this Code.

91.6215.3. Construction. Signs shall be constructed of noncombustible materials or approved plastics.

91.6215.4. Signs. (Added by Ord. No. 172,592, Eff. 6/28/99, Oper. 7/1/99.) Signs shall not be attached to any portion of the marquee except the periphery. Cloth or banner signs or drop-roll curtains may be suspended below the exterior periphery and extend within 7 feet of the grade.

SEC. 91.6216. TEMPORARY SIGNS.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6216.1. Permit Required. (Amended by Ord. No. 172,703, Eff. 8/16/99.) Notwithstanding any other provision of this Code, a building permit shall be required for a temporary sign, pennant, banner, ribbon, streamer or spinner, other than one which contains a political, ideological or other noncommercial message. The permit application shall specify the dates being requested for authorized installation and the proposed location.

91.6216.2. Time Limit. (Amended by Ord. No. 172,703, Eff. 8/16/99.)

1. Temporary signs that require a permit shall be removed within 30 days of installation and shall not be reinstalled for a period of 30 days of the date of removal of the previous sign. The installation of temporary signs shall not exceed a total of 90 days in any calendar year.

2. Temporary signs that do not require a permit shall be removed within 30 days of the date of installation of the sign.

91.6216.3. Area.

1. The combined sign area of temporary signs shall not exceed two square feet for each foot of street frontage.

2. The combined sign area of temporary signs, when placed upon a window, and any other window signs shall not exceed a maximum of ten percent of the window area. **(Amended by Ord. No. 172,703, Eff. 8/16/99.)**

91.6216.4. Type/Construction. Temporary signs may contain or consist of posters, pennants and banners. Temporary signs may be made of paper or any other material. If the temporary sign is made of cloth, it shall be flameproofed when the aggregate area exceeds 100 square feet. Every temporary cloth sign shall be supported and attached with stranded cable of 1/16-inch-minimum diameter or by other methods as approved by the Department.

91.6216.5. Location. Temporary signs, including those that do not require a permit, may be tacked, pasted or

otherwise temporarily affixed to windows and/or on the walls or buildings, barns, sheds or fences.

SEC. 91.6217. MURAL SIGNS.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6217.1. Approval. Approval for mural signs shall be obtained from the Cultural Affairs Commission. The placement, height, and overall area of a mural sign shall be as approved by the Cultural Affairs Commission. In making its determination the Cultural Affairs Commission shall find that the proposed sign does not conflict with the purposes and objectives set forth in Section 91.6201.2.

91.6217.2. General Requirements. In addition to the requirements of this section, mural signs must comply with Sections 91.6201 through 91.6205. Mural signs shall not be required to comply with the provisions of Sections 91.6210 and 91.6218.

SEC. 91.6218. OFF-SITE SIGNS.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.6218.1. General. Off-site signs shall comply with the requirements of this section and any applicable provisions of Sections 91.6201 through 91.6205.

91.6218.2. Location.

1. No portion of an off-site sign with a sign area greater than 80 square feet shall be placed within 200 feet of a residentially zoned lot which is located on the same side of the same street as the lot on which the sign is placed. However, where a lot has two or more street frontages, an off-site sign may be located on that street frontage which is not on the same street as the residentially zoned lot; provided the off-site sign

and sign support structure are placed in that half of the lot that is the farthest from the street frontage on which the residentially zoned lot is located.

2. No portion of an off-street sign or sign support structure shall be located in that half of a lot located farthest from the street frontage when residentially zoned property is located to the rear of that street frontage.

3. Off-site signs are not permitted along that portion of lots having a street frontage of less than 50 feet.

4. No more than four off-site signs shall be located at the intersection of two or more streets when such signs are located within 150 feet of the intersection of two street frontages.

5. An off-site sign face shall not be located within one foot of an interior lot line.

91.6218.3. Double-faced Signs.

1. Off-site signs may be either single or double-faced.

2. For double-faced signs whose faces are parallel, the distance between sign faces shall not exceed six feet.

3. For double-faced signs whose faces are not parallel, the distance between sign faces at their widest point shall not exceed 35 feet. The separation of sign faces at their closest point shall not exceed six feet. In no event shall the angle between sign faces exceed 37 degrees.

91.6218.4. Spacing.

1. A sign which is either single faced or parallel double faced shall be spaced as specified in Table No. 62-C of this Code from any other existing or previously permitted off-site sign which is single faced or parallel double faced.

2. For any double-faced sign, the spacing requirements shall be based on the area of the largest sign face.

3. For double-faced signs whose faces are not parallel, the spacing between any proposed, permitted or existing sign shall be determined by the following formula:

$$D = S \left| 1 + \frac{(B-5)}{90} \right|$$

WHERE:

D = required spacing between signs, in feet.
S = sign spacing determined from Table No. 62-C, in feet.
B = widest edge separation of sign faces in feet.

4. Spacing shall be measured between signs that are located on the same side of the same street. Such spacing shall be measured from a line that is perpendicular to the building line and that passes through a point on the building line that is closest to the nearest sign face edge. Spacing shall be measured along the center line of the street.

91.6218.5. Area. The sign area of a single face shall not exceed 800 square feet.

91.6218.6. Height.

1. The height to the top of the sign shall be limited to a maximum of 42 feet above the sidewalk

grade or edge of roadway grade nearest the sign, except that a sign that is more than 80 percent above a roof of a building may extend to the top of the sign a maximum of 30 feet above the surface of the roof under the sign.

2. In no event shall the height to the top of the sign exceed a height greater than that height specified for the height district in which the sign is located, or a height of 60 feet above the sidewalk grade or edge of roadway grade nearest the sign, whichever is more restrictive.

3. The bottom of the sign shall be at least eight feet above the sidewalk grade or edge of roadway grade nearest the sign.

91.6218.7. Projection. Off-site signs shall not project beyond the building line.

91.6218.8. Covering. The backs of off-site signs exposed to public view shall be covered with a finished surface or material and shall be properly maintained.

91.6218.9. Construction.

1. A sign and sign support structure shall be constructed of noncombustible materials or approved plastics.

EXCEPTION:

The sign facing may be mounted on wood-frame panels with the panels connected to wood runners that are bolted to a noncombustible frame.

2. A maximum of two poles shall be permitted for any sign. The maximum cross-sectional dimension of a pole shall not exceed 10 percent of the overall height of the sign.

3. Off-site sign supports shall be structurally independent of a building.

4. Sign support structures must be located directly under the sign face as viewed from the front of the sign. The maximum horizontal distance between the center of the sign support structure and the sign face shall not exceed 10 feet.